

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-4044

In The
United States Court of Appeals
For The Second Circuit

LOCAL 810, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

77-4069

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

EMCO STEEL, INC.,

Respondent.

*On Petition For Review and Cross-Petition For Enforcement of
an Order of the National Labor Relations Board.*

JOINT APPENDIX

Volume I, pp. 1a - 234a

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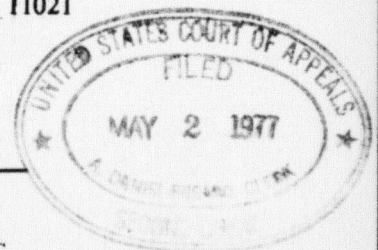
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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

1a

In the Matter of: Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Board Case No. 29-CA-4645

10.20.75 Charge filed

11. 5.75 First Amended Charge filed

12. 5.75 Complaint and Notice of Hearing dated

12.19.75 Answer to Complaint dated

2. 9.76 Regional Director's Order rescheduling hearing dated

3. 8.76 Petitioner's Motion to Intervene dated

3. 9.76 Amended Answer dated

3.10.76 Hearing opened

3.29.76 Hearing Closed

9. 2.76 Decision of the Administrative Law Judge

10.18.76 General Counsel's Exceptions to the Administrative Law Judge's Decision received

Company's Exceptions to the Administrative Law Judge's Decision received

1.13.77 Decision and Order of the National Labor Relations Board dated

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

In the Matter of

EMCO STEEL, INC.,

-and-

LOCAL UNION NO. 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, AFL-CIO

CASE NO.
20-CA-4645

National Labor Relations Board,
16 Court Street,
Brooklyn, New York
March 10, 1976

The above-entitled matter came on for
hearing commencing at 11:05 A. M.

BEFORE:

ROBERT M. SCHWARZBART.

Administrative Law Judge.

APPEARANCES:

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BY: ROBERT M. ZISKIN, ESQ., of counsel

Attorneys for Local 810,
98 Cutter Mill Road,
Great Neck, New York.

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I N D E XWITNESSDIRECTVOIR DIRE

Seymour Erney

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Dano Coli

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Anthony Schifano

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E X H I B I T SGENERAL COUNSEL
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1-A to 1-J

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1 Prior to the opening of the hearing today,
2 I filed a motion to intervene with Regional Director
3 Kaynard, which motion, I understand, is pending before
4 you now, and I move to intervene in these proceedings
5 on behalf of Local 810, International Brotherhood of
6 Teamsters, Chauffeurs, Warehousemen & Helpers of America,
7 as I'm sure that you have noted that the complaint alleges
8 a collective bargaining agreement between Local 810 and
9 the Respondent in this case.

10 MR. EDELMAN: Your Honor, I received,
11 as General Counsel, a copy of the motion yesterday in
12 the morning and I handed Your Honor a copy of this mo-
13 tion this morning.

14 I did so by hand delivery, rather than by
15 mail inasmuch as the document would have crossed and
16 would have been in Washington while you were here.

17 General Counsel has no objection to the
18 motion to intervene by counsel for Local 810, and indeed,
19 we move that the complaint be amended to include in the
20 caption Local 810 as a party to this proceeding.

21 JUDGE SCHWARZBART: Are there any objec-
22 tions to the motion to intervene and the General Counsel's
23 motion that the complaint be amended to reflect the ap-
24 pearance of Local 810 as Party to the Contract in the
25 caption?

1 MR. PEARL: No objection by Respondent.

2 JUDGE SCHWARZBART: The motion is granted.

3 MR. ZISKIN: Thank you.

4 JUDGE SCHWARZBART: The motion is granted.

5 MR. EDELMAN: In addition, Your Honor,
6 I would at this time like to move to amend Paragraph 15
7 of the complaint to --

8 JUDGE SCHWARZBART: Could I interrupt you
9 for a minute?

10 MR. EDELMAN: Yes.

11 JUDGE SCHWARZBART: We're getting ahead
12 of ourselves.

13 We have not received the formal exhibits
14 yet.

15 MR. EDELMAN: I'm sorry. You're right.

16 JUDGE SCHWARZBART: Prior to the start
17 of the--

18 MR. TAUBER: Your Honor, if I may, I would
19 like to note my formal appearance in the record.

20 JUDGE SCHWARZBART: You're Mr. Tauber?

21 MR. TAUBER: Yes, that is correct.

22 JUDGE SCHWARZBART: I believe that your
23 appearance has already been noted.

24 MR. TAUBER: I've been informed that the
25 spelling has been incorrect and I would like to correct

General Counsel will call as its first witness Seymour Erney.
Whereupon,

SEYMOUR ERNEY

called as a witness, having been first duly sworn by Judge
Schwarzbart, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Mr. Erney, I believe that your position
with Emco is the president; is that correct?

A Yes.

Q It's a New York corporation; is that correct?

A Yes.

Q And you began business on or about what
date?

A Oh, on or about September--in September of
1974.

We have been in business about a year and
a half.

Q All right.

MR. EDELMAN: Your Honor, I assume that I--
well, let me make a formal request.

I would request permission, whether it's
necessary to examine the witness under Rule 611.

JUDGE SCHWARZBART: Granted.

Q Now, Mr. Erney, could you tell me what type

1 of business that Imco is engaged in?

2 A We are structural steel fabricators.

3 Q I'm a layman. Tell me what a structural
4 steel fabricator is.

5 A We put holes in beams and cut beams and
6 paint beams for buildings.

7 Q Or buildings?

8 A For buildings.

9 Q For buildings?

10 A Yes.

11 Q Do you erect these beams or just perform
12 certain operations upon them?

13 A Sometimes we erect the steel, yes.

14 Q I see.

15 Now, what is erecting the steel?

16 A That would be standing up of steel for the
17 different structures.

18 Q Does this steel comprise the superstructure
19 of the building?

20 A Part of the superstructure, yes.

21 Q And what type of buildings do you supply
22 steel for, structural steel for?

23 A Any building that requires structural steel.

24 Q Would that be office buildings?

25 A Yes.

* * *

CSA Reporting

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Q Where is that located?

A Might be across the street, might be across the street.

Q Do you have a lease--do you have a lease on that building?

A Which building?

Q The building across the street.

A No.

Q What kind of arrangement do you have in connection with the use of this building?

A If I need the space, I would ask the gentleman to lend me the space or I would rent the space from him for a week, a day or an hour.

Q You would pay rent?

A Yes.

In other words, if I would use it, yes.

Q Now, in connection with the operation that you are engaged in, what classification of employees do you normally employ?

I would employ a man who knows how to cut steel.

Q All right. Would it be fair to call him a steel cutter?

A No, mechanic would be--

Q A mechanic?

1 A Yes.

2 Q Is that the term that is used in the industry?

3 A Yes, mechanic.

4 Q All right.

5 And what other classifications of employees
6 do you employ?

7 A I would have a laborer, perhaps.

8 Q Any other classification?

9 A No.

10 Q Generally, then, you would employ mechanics
11 and laborers?

12 A Yes.

13 Q And the number of these employees, I take it,
14 depends on the volume of business at the period of time?

15 A Yes, that is correct.

16 MR. EDELMAN: Do you have the payroll
17 records, please?

18 MR. PEARL: Is it in the envelope?

19 THE WITNESS: No, it's in the--could I see
20 it, please?

21 MR. PEARL: I'll show it to you.

22 THE WITNESS: All right.

23 MR. EDELMAN: Before I mark this, I just
24 want to make sure I know where we're going.

25 All right, Your Honor, I would like to, at

1 this time, to put certain payroll records into evidence.
2

3 However, it's not necessary to include the
4 whole book.

5 I wonder if it would be possible if we
6 could just mark several of the pages that I intend to
7 put into evidence?

8 JUDGE SCHWARZBART: Mr. Pearl?

9 MR. PEARL: I have no objection to that.

10 JUDGE SCHWARZBART: Mr. Ziskin?

11 MR. ZISKIN: I have no objection unless
12 we could passively stipulate the information.

13 MR. EDELMAN: Well, I have no problem to
14 stipulating the information, if that's possible.

15 JUDGE SCHWARZBART: Off the record.

16 (Discussion off the record.)

17 JUDGE SCHWARZBART: On the record.

18 MR. EDELMAN: Your Honor, during the off
19 the record discussion, I believe that we were able to
20 work out a stipulation that the employees employed by
21 Respondent during the month of September, between the
22 dates September 1st and September--

23 MR. PEARL: 26th.

24 MR. EDELMAN: September 26th--

25 MR. PEARL: Which is a Friday.

MR. EDELMAN: 1975, were Dano Coli. Tom

1 McGovern and John Frick.

2 JUDGE SCHWARZBART: Would you so stipulate,
3 Mr. Pearl?

4 MR. PEARL: That they were employees for
5 that period of time. yes.

6 JUDGE SCHWARZBART: Mr. Ziskin?

7 MR. ZISKIN: I would so stipulate.

8 JUDGE SCHWARZBART: Received.

9 MR. EDELMAN: And Your Honor, I would like
10 to press a little further on in that area.

11 JUDGE SCHWARZBART: All right.

12 BY MR. EDELMAN:

13 Q Mr. Erney--

14 MR. EDELMAN: First, before I do that, I'm
15 going to have this document marked as General Counsel's
16 Exhibit 2.

17 (Document marked General Counsel's Exhibit
18 No. 2 for identification, as of this date.)

19 Q Now, Mr. Erney, I show you General Counsel's
20 Exhibit marked for identification 2, and ask you if you
21 recognize the document.

22 (Document handed to the witness.)

23 A Yes.

24 Q What is that document?

25 A It's my payroll record.

1 Q Okay.

2 Now, on your payroll book I see a date,
3 payroll period ending, and the first date that I look at
4 is September 5, 1975.

5 I take it that that would represent the
6 employees employed by Enco as of that payroll period
7 ending?

8 A That is correct.

9 Q All right.

10 Now, looking at that, I see the names of
11 Cy Erney, Jerry Meisner, Tom McGovern, John Frick and
12 Dano Coli, and I also see certain other names.

13 Would these names below Dano Coli, on
14 Lines 11, 13, 14 and 15, were they employed by you on
15 September 5th?

16 A No.

17 Q They were not?

18 A No.

19 Q Nor were they employed by you on payroll
20 period ending September 19th?

21 A Going back to the other one, yes, yes, I
22 was employed, and on the lines--on the Lines 11 and 13,
23 Jerry and myself were employed.

24 Q And Mr. Preuss was not?

25 A Yes.

1 Q And Mr. Scarlet was not?

2 A Yes.

3 Q And Mr. Grant was not employed?

4 A When?

5 Q As of September 5th?

6 A No, they were not.

7 Q Nor were they employed as of the payroll
8 period ending the 19th?

9 A Yes, that is correct.

10 Q Nor were they employed as of the payroll
11 period ending the 26th?

12 A Yes, that is correct.

13 Q Now, were they employed as of the payroll
14 period ending October 3rd?

15 A Yes, that is correct.

16 Q Now, on your payroll period ending October
17 17th, I see Mr. McGovern was still employed by you and
18 Mr. Frick was still employed by you, and Mr. Coli was
19 no longer employed by you.

20 Is that correct?

21 A Yes.

22 Q And had he quit?

23 A No, he did not quit.

24 Q And was there a reason that he was no longer
25 employed by you?

15a

A Yes.

Q What was the reason?

A There wasn't any work in.

Q I see.

You did have Mr. Preuss and Mr. Scarlet and Mr. Grant still employed; is that correct?

A Yes, that is correct.

Q All right.

And you had those three employees on the 31st of October; is that correct?

A Yes, that is correct.

Q And then you also had those same employees as of the payroll period ending November 7th?

A Yes, that is correct.

Q And I think that I have left out one, October 24th; you still had those three employees; is that correct?

A Yes.

Q Now, coming to November 14, 1975, you had two employees, outside of yourself and Mr. Meisner--of course, that would be Mr. McGovern and Mr. Frick?

A Yes.

Q And the same would be true on November 26th?

A 26th?

Q 21st, I'm sorry.

1

2

A Yes.

3

Q And the same would be true on November 28th?

4

A Yes.

5

Q And on December 5th?

6

A Yes, sir, that is correct.

7

Q And that is as far as this payroll book

8

goes; is that correct?

9

A Yes, that is correct.

10

Q You presently have a collective bargaining

11

agreement with Local 810, IBT?

12

A Yes.

13

Q Do you have a copy of that collective

14

bargaining agreement with you?

15

A I --

16

JUDGE SCHWARZBART: Excuse me. Before we

17

go into that, could we explore the different job cate-

18

gories that these different employees have?

19

MR. EDELMAN: All right, I have no objec-

20

tion to that.

21

Let me withdraw the question about the

22

contract and go into the job classifications of the em-

23

ployees.

24

JUDGE SCHWARZBART: Fine.

25

Q You testified before that you were employed--

that you employed mechanics and laborers; is that correct?

1 A Yes, that is correct.

2 Q All right.

3 Now, what was Mr. McGovern?

4 A Mr. McGovern is--Mr. McGovern actually is
5 a mechanic.

6 Q All right.

7 And how about Mr. Coli?

8 A Mr. Coli is a mechanic.

9 Q And how about Mr. Frick?

10 A He is--he is--his classification would be
11 considered a laborer, actually.

12 Q And how about Mr. Preuss?

13 A He would be considered a laborer.

14 You see, sometime we--what we do is some
15 men do different work.

16 Q Would they--would he generally fall under
17 the category of a laborer rather than a mechanic?

18 A Possibly, possibly, right.

19 Q Would that be your best answer?

20 A He would be a laborer.

21 Q All right.

22 And Mr. Scarlet?

23 A He would do the same type of work, a labor-
24 er type of work.

25 Q And Mr. Grant?

1
2 A Same type of work.

3 He would--yes, the same type of work.

4 Q All right.

5 MR. EDELMAN: I would move, Your Honor,
6 that General Counsel's Exhibit No. 2, the payroll rec-
7 ords from September 5th, for the payroll period ending
8 September 5th through the payroll period ending Decem-
9 ber 5th, be admitted into evidence as part of General
10 Counsel's Exhibit 2, or comprised of General Counsel's
11 Exhibit 2.

12 JUDGE SCHWARZBART: Are there any objec-
13 tions?

14 MR. PEARL: None.

15 MR. ZISKIN: No objection, Your Honor.

16 JUDGE SCHWARZBART: Received.

17 And I gather that you are also going to
18 seek leave to withdraw the document and substitute copies?

19 MR. EDELMAN: That is correct, Your Honor.

20 JUDGE SCHWARZBART: Granted.

21 (General Counsel's Exhibit No. 2 for iden-
22 tification received in evidence, as of this date.)

23 BY MR. EDELMAN:

24 Q Now, my question to you, Mr. Erney, you
25 have a contract with Local 810; is that correct?

A Yes.

1
2 Q And that contract covers your mechanics
3 and laborers; is that correct?

4 A Yes, that is correct.

5 Q And do you have a copy of that agreement
6 with you?

7 A Yes, I believe that we do, yes.

8 Q And may I see a copy of that agreement?

9 MR. PEARL: Here.

10 (Mr. Pearl hands document to witness.)

11 MR. PEARL: May I just show him this for
12 a minute, please?

13 MR. EDELMAN: Sure.

14 A Yes, this is the contract.

15 MR. EDELMAN: I would like to have this
16 marked--

17 Q Mr. Erney, I was just ready to mark a docu-
18 ment and you just erased something.

19 A What I put on top of the paper was "joined
20 the union October 14, 1975."

21 Q Was that part of the document?

22 A No, that was just part of my own informa-
23 tion, for my own edification.

24 MR. EDELMAN: I would like to mark this
25 document as General Counsel's Exhibit 3.

1 (Document marked General Counsel's Exhibit
2 No. 3 for identification, as of this date.)

3 Q Mr. Erney, I show you General Counsel's
4 Exhibit No. 3 marked for identification--

5 A Yes.

6 Q --and ask you if you have ever seen that
7 document before.

8 (Document handed to the witness.)

9 A Yes, I have.

10 Q Could you tell me what it is.

11 A It's a contract between Emco Steel and
12 Local 810.

13 Q Now, when you were handed the document
14 before there was some pencil notation written on the
15 first page at the very top, in the top margin.

16 A Yes.

17 Q And you erased that.

18 A Yes.

19 Q Now, could you tell me what that notation
20 said?

21 A It was a notation which said, "Joined
22 union October 14, 1975."

23 Q You said that it said "Joined union," or
24 "join union"?

25 MR. PEARL: Objection.

1 JUDGE SCHWARZBART: What is--

2 MR. PEARL: Objection.

3 JUDGE SCHWARZBART: What is the objection?

4 MR. PEARL: The question was answered.

5 MR. EDELMAN: If I would have understood
6 the answer, I would not have asked the next question.

7 JUDGE SCHWARZBART: Counsel may not have
8 understood the answer.

9 I'll allow him to clarify that.

10 Q Was it "join," or "joined" with a "d"?

11 A Let me see what it says.

12 Q All right.

13 A Joined, j-o-i-n-e-d.

14 Q "Joined union"?

15 A Yes.

16 Q And what is the date of that?

17 A October 14, 1975.

18 Q And in whose handwriting was that?

19 A My handwriting.

20 Q And that was in pencil?

21 A Yes, that was in pencil, yes.

22 Q As a matter of fact, that is the date that
23 you did enter into a contract with Local 810; is that
24 correct, October 14th--

25 A Yes.

1 Q --of 1975?

2 A Yes.

3 Q And the term of the agreement is to commence
4 on October 14, 1975, and to expire on October 6, 1978;
5 is that correct?

6 A 5.

7 Q 5.

8 MR. PEARL: I didn't hear that.

9 What date was that?

10 MR. EDELMAN: 5, October 5.

11 MR. PEARL: October 5?

12 MR. EDELMAN: 1978.

13 MR. PEARL: Thank you.

14 Q I take it that this is the original con-
15 tract that was signed between you and Local 810?

16 A Yes.

17 Q And there are various notations throughout
18 the contract and the pages are initialed; is that correct?

19 A Yes.

20 Q And is your initial on that page?

21 A Yes.

22 Q And is there another initial on that page?

23 A Yes.

24 Q And whose initial is that?

25 A That initial is a Dennis Silverman.

* * *

1 lawyer.

2
3 Maybe we could just ask him if whether
4 dues and initiation fees have been produced.

5 If that what Mr. Edelman is driving at, why
6 not just drive him to a provision in the collective bar-
7 gaining agreement?

8 MR. SCHWARZBART: Do you have any objec-
9 tion to having the question rephrased as it was rephrased
10 by Mr. Ziskin?

11 MR. EDELMAN: Well, let me rephrase it the
12 way that I wish to rephrase it.

13 THE WITNESS: You have to ask the question
14 again.

15 JUDGE SCHWARZBART: Let me ask you this.
16 We have looked at the collective bargaining
17 agreement--

18 THE WITNESS: Yes.

19 JUDGE SCHWARZBART: -- and in Paragraph 3,
20 that apparently is what you have just looked at, which--

21 THE WITNESS: Yes.

22 JUDGE SCHWARZBART: -- which refers to dues
23 and initiation fees and other monies, if any, being deduct-
24 ed from employees' salaries and being paid over to the
25 union.

Is that correct?

CSA Reporting

1 THE WITNESS: Yes.

2 JUDGE SCHWARZBART: What, if anything, has
3 been the practice of your company with regard to those
4 provisions?

5 THE WITNESS: We have upheld the contract,
6 whatever the contract has stated, that's what we have
7 upheld.

8 BY MR. EDELMAN:

9 Q Are your employees required to become mem-
10 bers of a union following--thirty days following their
11 employment?

12 A If that is what the contract reads, yes.

13 Q They are?

14 A Yes.

15 Q And do those employees have dues and initi-
16 ation fees deducted from their pay checks by you?

17 A Did they?

18 Q Do they. During the year 1975, beginning--

19 A Yes.

20 Q --beginning on and after the execution of
21 this contract, have you deducted and paid over to the
22 union dues and initiation fees from your employees' pay?

23 A That is correct.

24 Q I would take it, also, that insofar as
25 you know, you're complying with all of the terms of this

1 collective bargaining agreement?

2 A Yes.

3 Q Do you recall, in connection with this case,
4 that there were two charges filed, received, first a
5 charge from us on -- around October 24th, and then at a
6 later date you received an amended charge?

7 A I have to see them. I'm not an attorney.

8 Q All right.

9 MR. EDELMAN: May I just have the formal
10 papers?

11 JUDGE SCHWARZBART: Yes.

12 (Judge Schwarzbart hands document to counsel.)

13 Q Do you recall receiving--did you recall re-
14 ceiving this--this charge, and I refer to General Counsel
15 Exhibit 1-A?

16 (Document handed to the witness.)

17 MR. PEARL: Pardon me. Which of the two
18 is that?

19 MR. EDELMAN: The 20th, 1-A.

20 MR. PEARL: The 20th?

21 MR. EDELMAN: Right, not the first amend-
22 ment.

23 MR. PEARL: All right.

24 Q Do you recall receiving a charge from the
25 Board pursuant to that, if not the exact wording?

CSA Reporting

1 MR. ZISKIN: The fact that he does not in-
2 tend to take the stand himself does not mean that we
3 do not wish to call him.

4 I think that that puts him in a position--

5 JUDGE SCHWARZBART: I've made my ruling.

6 I'll allow the question.

7 MR. EDELMAN: Thank you, Your Honor.

8 BY MR. EDELMAN:

9 Q Do you recall Mr. Erney, telling me in
10 the conversation on or about October 24th, that a week
11 before signing this agreement you had a conversation with
12 Steve Silverman of Local 810, who told you that he re-
13 presented your employees and that they signed cards;
14 do you recall that?

15 A Repeat that.

16 Q Did you recall telling me on or about
17 October 24th, in a telephone conversation, that a week
18 before you signed your collective bargaining agreement
19 with Local 810, that you had a conversation with Steve
20 Silverman or a meeting with Steve Silverman of Local 810,
21 and in that meeting he told you that he represented your
22 employees and that they had signed cards?

23 A Possibly. I don't -- possibly.

24 Q All right.

25 And do you recall also telling me on or

1 about October 24th in a telephone conversation with me,
2 that about three weeks prior to your meeting with Steve
3 Silverman that Tony Schifano of Local 455 --

4 JUDGE SCHWARZBART: How is that spelled?

5 MR. EDELMAN: S-c-h-i-f-a-n-o.

6 JUDGE SCHWARZBART: All right, continue.

7 Q --Tony Schifano of Local 455 had come in
8 and told you that he had represented your employees?

9 A I don't recall.

10 Q And do you recall on or about October 24th
11 in a telephone conversation with me, that you also told
12 me that you had on or about the middle of September, re-
13 ceived a telegram from Local 455, on or about September
14 15th or 18th, demanding recognition?

15 A You're assuming that I spoke to you.

16 I don't recall.

17 Q I asked you if you recall.

18 A Recall what?

19 Q I asked you--

20 A Yes, I did receive a telegram.

21 Q You did?

22 A Yes.

23 Q From Local 455?

24 A Yes. But I don't know whether I told you--
25 whether I told that to you. I don't recall telling you.

1 Q Do you recall what the telegram said, the
2 sum and substance of it?
3

4 A That they had a majority. I don't know.
5 You have the telegram in front of you. Why are you asking
6 me?

7 Q I'm asking you if you can recall the re-
8 ceipt of the telegram from Local 455, wherein they stated--

9 A Yes, I remember getting the telegram.

10 Q Sometime in the middle of September?

11 A Yes.

12 Q Very well.

13 Now, after you got this telegram, it was
14 a 455 telegram, I take it?

15 A Excuse me?

16 Q It was a telegram sent by Local 455?

17 A Yes, I think that it was, yes.

18 Q As a matter of fact, if I showed you the
19 telegram, would that--would that possibly refresh your
20 recollection as to the receipt of it?

21 A Possibly.

22 MR. EDELMAN: All right, let's mark this
23 as General Counsel's Exhibit No. 4.

24 (Document marked General Counsel's Exhibit
25 No. 4 for identification, as of this date.)

Now, I show you General Counsel's Exhibit
* * *

Honor.

* * *

MR. ZISKIN: I have no objection, Your Honor.

JUDGE SCHWARZBART: Received.

(General Counsel's Exhibit No. 4 for identification received in evidence, as of this date.)

BY MR. EDELMAN:

Q Now, in connection with the--or following thereceipt of this telegram, were you contacted by Mr. Schifano or any other member of Local 455?

A Yes.

Q And who contacted you?

A Mr. Schifano.

Q And on or about when did he contact you in connection with the receipt of the telegram?

A A couple of days afterwards.

Q A few days afterwards?

A Yes, a few days afterwards, that is correct.

Q And where did he contact you?

A In my office.

Q All right.

Would you tell me the sum and substance of any conversation that you had with Mr. Schifano at this time?

A Well, I recall he came in. He spoke to me a bit and I said, "Tony, I have no time to talk to

1 you, I'm very busy."

2 Q And what did he say?

3 A I don't recall what he said.

4 He asked me--or I asked him, just a matter
5 of a cordial greeting in the morning, "What's going on?"

6 And I said, "Nothing, Tony."

7 And he said, "Did you get my telegram?"

8 "Yes."

9 Q This is Mr. Schifano? He said, "Did you
10 get my telegram?"

11 A Yes.

12 And I said, "Yes, I did."

13 Well, I said nothing. I said, "I have
14 no time to talk to you."

15 And he said, "I'll come back to talk to
16 you another time."

17 Q Did he come back any more?

18 A I think once or twice.

19 Q Do you recall when that was?

20 Do you recall, was that before or after
21 you signed the contract with Local 810?

22 A It might have been before.

23 Q All right.

24 When he came back the second time, were you
25 in your office at that time?

1 A Yes.

2 Q And did he have a conversation with you at
3 that time?

4 A Yes.

5 Q Could you describe the conversation?

6 A The same word for word conversation. "Tony,
7 I have no time to talk to you."

8 "Okay, I'll come back some other time."

9 Q All right.

10 It's your testimony then that Mr. Schifano,
11 following receipt of this telegram, visited you on two
12 occasions and you had these brief conversations with him
13 and--

14 A Yes. that is correct.

15 Q --no other conversations with him?

16 A Not that I can recall, no.

17 Q If I were to tell you that I'm going to
18 call Mr. Schifano up to the stand and his testimony would
19 be that he engaged in three lengthy meetings with you
20 and Mr. Meisner, wherein proposed--contract proposals
21 were discussed at length, wherein there were certain
22 points agreed to and therein there were certain points
23 in issue, and in connection with the points in issue,
24 you and Mr. Meisner took certain positions and Mr. Schifano
25 took other positions, would that refresh your recollection

1 testimony of your own witnesses.

2
3 MR. EDELMAN: I'm willing to risk it.

4 In any event, though, I would withdraw the
5 question and put another question to the witness.

6 JUDGE SCHWARZBART: Fine.

7 BY MR. EDELMAN:

8 Q Did you have any contract negotiations
9 with Mr. Schifano?

10 A No.

11 Q Did you discuss any contract proposals with
12 Mr. Schifano?

13 A The only contract proposals that were dis-
14 cussed was the fact that Tony Schifano, 455 was on strike
15 and that he was having a great deal of difficulty working
16 out negotiations with the rest of the industry.

17 Other than that, I don't recall having a
18 one-to-one discussion about us.

19 Q Were there any proposals that he presented
20 to you to study?

21 A Wait a second. He practically -- he threw
22 the contract on the table, and that was the extent of--
23 threw a contract on the table, which was so voluminous
24 it was--as a layman, it was about three inches thick, and
25 that was the extent of our conversation.

Q What did he say about the contract that he

1 threw on the table?

2 A Read it and sign it. And I laughed.

3 Q Was this the first meeting or the second
4 meeting?

5 A No, it was not the first meeting. It
6 possibly could be the second meeting.

7 Q Was there any other meetings?

8 A Maybe. We were so busy at the time. He
9 might have been there a third time; I don't recall.

10 MR. EDELMAN: I don't have any further
11 questions of the witness, Your Honor.

12 MR. PEARL: Your Honor, at this time I will
13 request that perhaps, on behalf of all parties, we recess
14 for lunch and continue with the examination of Mr. Erney
15 after lunch.

16 MR. EDELMAN: I have--I have two witnesses.

17 Are you going to cross-examine Mr. Erney
18 at any length or examine Mr. Erney at any length?

19 MR. PEARL: Merely on some of the items
20 that you have elicited.

21 I would recall Mr. Erney at a later time
22 to rebut other testimony of Mr. Schifano, of course, and
23 others that you bring.

24 I don't think that it will be too lengthy.

25 MR. EDELMAN: Because I have two witnesses
 * * *

(Witness excused.)

JUDGE SCHWARZBART: Raise your right hand.
Whereupon,

DANO COLI

called as a witness, having been first duly sworn by
Judge Schwarzbart, was examined and testified as follows:

JUDGE SCHWARZBART: Please be seated.

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Mr. Coli--

A Yes.

Q --were you ever employed by--

JUDGE SCHWARZBART: State the witness' full
name and address, please.

MR. EDELMAN: I'm sorry, I thought that
you had done that.

Q Mr. Coli, would you state your name and
address, sir?

A Well, first of all, my name is Dano.

Q Okay, would you please be seated, Mr. Coli.
Just spell out your name for the record,
sir.

A My last name is Coli, C-o-l-i, and my
address is 50 58th Street, Elmhurst.

JUDGE SCHWARZBART: New York?

1 A Queens, yes.

2 MR. PEARL: Could we have the address again?

3 THE WITNESS: 50 58th Street.

4 Q Mr. Coli, were you ever employed by Emco?

5 A Yes.

6 Q Were you employed by Emco during September,
7 1975?

8 A Yes.

9 Q And during your--what was your position
10 at Emco? What were you--what type of work were you doing?

11 A Welder mechanic, structural steel.

12 MR. EDELMAN: I would like to have this
13 marked as General Counsel's Exhibit 5.

14 (Document marked General Counsel's Exhibit
15 No. 5 for identification, as of this date.)

16 Q Now, Mr. Coli, I show you a document marked
17 G. C. 5 for identification, and ask you if you have ever
18 seen that card.

19 (Document handed to the witness.)

20 A Yes.

21 Q Is that your signature on that card?

22 A Yes.

23 Q You signed the card?

24 A Yes.

25 Q And did you date the card?

1 A No, I just signed my name.
2 Q I see.
3 And the card--did you see the card dated?
4 A Yes.
5 Q And did you fill that in?
6 Is that your handwriting?
7 A Yes, that is my signature, yes.
8 Q Did you fill the card in?
9 A No, no, that is not my writing.
10 Q Now, on the card there is a date 9/15/75.
11 A Yes.
12 Q Did you date that?
13 A No, I didn't date that.
14 It's just my signature.
15 Q Do you recall how you came to get this card?
16 A What do you mean by that?
17 Q Who gave you the card?
18 A Oh, Tony Schifano.
19 Q And when did he give you the card?
20 A In the shop.
21 Q And do you recall when he gave you the card,
22 on or about when he gave you the card?
23 A Lunchtime, yes.
24 Q And do you recall what month that he gave
25 you the card? Was it in the month of September, 1975?

1 A Well, this one I'm not sure. I mean, I
2 don't keep track of dates, but when this was signed, the
3 9/15/75.

4 MR. ZISKIN: I'm sorry, I didn't hear that.

5 A I mean, I don't remember.

6 Q Do you recall whether it was--do you remember
7 whether--were you laid off by Enco?

8 A Yes, I was laid off.

9 Q And do you recall about the date of your
10 layoff?

11 A Well, it was in October, I believe.

12 Q Early October?

13 A October 3rd. I mean, I don't have the records.

14 JUDGE SCHWARZBART: Can we stipulate the
15 date?

16 THE WITNESS: I mean, I don't know.

17 JUDGE SCHWARZBART: Can we stipulate the
18 date that Mr. Coli was laid off?

19 THE WITNESS: I don't know. It was in
20 October that I was laid off.

21 MR. PEARL: October 3 seems correct.

22 Q Now, in connection with your layoff, about
23 when did you sign that card? Was it before your layoff?

24 A Oh, yes, it was before the layoff, yes.

25 Q And was it a few weeks before the layoff,

1 to your best recollection?

2 A Yes, it was around--about three weeks, four
3 weeks.

4 Q All right.

5 A I don't--

6 Q Let me ask you this.

7 Are you presently a member of 455?

8 A Yes.

9 Q And have you been a member of 455 for the
10 past year and a half?

11 A Yes, since '49.

12 Q And you signed this card--

13 A Yes.

14 Q --sometime before your layoff?

15 A It was after. I don't know how much--a
16 matter of weeks.

17 Q And Mr. Schifano gave you that card to sign?

18 A Yes.

19 Q All right.

20 And--did he have any conversation with you
21 that you can recall in connection with signing that card?

22 Did he tell you about the card?

23 A What do you mean by "conversation"?

24 Q Well, when he gave you the card, what did
25 he say to you?

1 A Well, he gave me this card to sign. I
2 imagine that it was for--to--
3

4 JUDGE SCHWARZBART: Well, we can't go into
5 questions of imagination. Let's just see if I can get
6 this traight for the record.

7 THE WITNESS: All right.

8 JUDGE SCHWARZBART: Now, the time when you
9 said that you--the time that you said that that card was
10 given to you, I think that you testified that it was at
11 lunchtime?

12 THE WITNESS: Yes.

13 JUDGE SCHWARZBART: At lunchtime where?

14 THE WITNESS: In the shop.

15 JUDGE SCHWARZBART: When do you people have
16 lunch in the shop?

17 THE WITNESS: Well, it was in the summer,
18 so I would think that it was outside.

19 JUDGE SCHWARZBART: So you were outside?

20 THE WITNESS: Yes.

21 JUDGE SCHWARZBART: Was anyone else with
22 you?

23 THE WITNESS: John Frick.

24 JUDGE SCHWARZBART: All right.

25 MR. EDELMAN: Thank you.

Q Did he give a card to Mr. Frick, too?

1 A I imagine.

2 Q When you say that you imagine--

3 A I think so.

4 Q That's your best recollection?

5 A I don't take notes of what goes on.

6 JUDGE SCHWARZBART: But to the extent that
7 you can recall what happened; if you can't remember then--
8 say so, not what you imagine.

9 What happened on that day? You were out-
10 side, and what happened?

11 THE WITNESS: Well, Tony Schifano came over
12 and he gave me this card.

13 I'm a member since 1949, so I figured that
14 it was for 455.

15 So at that time I had no alternative, as
16 a member of 455.

17 JUDGE SCHWARZBART: So he came over--

18 THE WITNESS: Yes.

19 JUDGE SCHWARZBART:--and what did he say to
20 you? What do you recall? How did the conversation begin?

21 THE WITNESS: I don't remember.

22 I mean, seriously, I don't remember. I
23 don't know what led up to it.

24 BY MR. EDELMAN:

25 Q Do you recall him saying anything about the

41a

1 card?

2 A Like what? This is a card from 455.

3 JUDGE SCHWARZBART: We're asking for your
4 best recollection.

5 THE WITNESS: It probably pertains--

6 Q Mr. Coli, I want you to relax for just one
7 second.

8 A I don't know.

9 Q I just want you to relax.

10 A I don't know.

11 JUDGE SCHWARZBART: Mr. Coli, don't argue
12 with counsel.

13 THE WITNESS: I'm not arguing.

14 JUDGE SCHWARZBART: You're--please, just
15 answer the question that is put to you.

16 THE WITNESS: I'm saying, I don't know.

17 JUDGE SCHWARZBART: All right.

18 Proceed.

19 Q Do you recall Mr. Frick being present with
20 you at this time?

21 A Yes.

22 Q And do you recall whether or not Mr. Schifano
23 also handed Mr. Frick a card, to the best of your recollec-
24 tion?

25 A Well, I didn't see him, but I imagine, yes.

1
2 JUDGE SCHWARZBART: Well--did he or didn't
3 he?

4 MR. PEARL: Your Honor--

5 JUDGE SCHWARZBART: Well, what is the an-
6 swer to the question?

7 Did he or didn't he?

8 THE WITNESS: Well, I'm sitting here (in-
9 dicating). Mr. Frick was sitting there (indicating).
10 So, yes, I saw him give him the card.

11 JUDGE SCHWARZBART: All right.

12 Continue, Mr. Edelman.

13 MR. EDELMAN: Yes.

14 BY MR. EDELMAN:

15 Q And you signed your card and gave it back
16 to Mr. Schifano?

17 A Yes.

18 Q And Mr. Frick, what did he do with his card?

19 A Well, I don't know what he did. I didn't
20 see him do anything with the card.

21 MR. EDELMAN: I don't have any further
22 questions.

23 JUDGE SCHWARZBART: One more question.

24 THE WITNESS: All right.

25 JUDGE SCHWARZBART: When did you sign that
card with regard to that incident with Mr. Schifano?

1
2 THE WITNESS: What do you mean, the day that
3 that card was signed?

4 JUDGE SCHWARZBART: At the time--at the
5 time Mr. Schifano handed you a card, it is your testimony
6 that he handed you a card, that was your testimony, is
7 that correct?

8 THE WITNESS: Yes.

9 JUDGE SCHWARZBART: Now, what did you do
10 with that card at that time that he handed you the card,
11 what, if anything, did you do with the card?

12 THE WITNESS: Well, he handed me the card
13 and I must have signed it.

14 JUDGE SCHWARZBART: Did you or didn't you?

15 THE WITNESS: Yes.

16 That is my signature.

17 MR. EDELMAN: What did you do then with the
18 card?

19 THE WITNESS: Well, then, I gave it to Mr.
20 Schifano.

21 MR. EDELMAN: I have no further questions
22 of this witness.

23 MR. PEARL: Excuse me one minute.

24 I would like to know from General Counsel
25 if this witness has given an affidavit--

MR. EDELMAN: No.
* * *

* * *

AFTERNOON SESSION

2:40 o'clock P. M.

JUDGE SCHWARZBART: On the record.

During an off the record discussion, counsel for the Respondent and the Party to the Contract, have advised me that they intend to waive cross-examination of Mr. Erney at this time, that he may be recalled during the Respondent's case in chief, at which time he may be submitted to further examination.

Is that correct?

MR. PEARL: That is correct.

MR. ZISKIN: Yes, Your Honor.

JUDGE SCHWARZBART: Mr. Edelman?

MR. EDELMAN: Yes.

I call my next witness, Mr. Schifano.

Whereupon,

ANTHONY SCHIFANO

called as a witness, having been first duly sworn by Judge Schwarzbart, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EDELMAN:

Q Mr. Schifano, would you state your name, please?

A Yes. My name is Anthony Schifano.

1 Q And your home address?

2 A 265 West 14th Street, Manhattan.

3 JUDGE SCHWARZBART: Where is that?

4 THE WITNESS: New York City.

5 JUDGE SCHWARZBART: Is that Manhattan?

6 THE WITNESS: Yes.

7 JUDGE SCHWARZBART: All right.

8 BY MR. EDELMAN:

9 Q Mr. Schifano, are you presently employed?

10 A Yes.

11 Q And the name of your employer?

12 A Is the Apprenticeship Fund of Local 455.

13 Q How long have you been employed by the
14 Apprenticeship Fund?

15 A About three years.

16 Q And do you hold any position with the Fund?

17 A No, not in the Fund.

18 Q All right.

19 Are you a member of Local 455?

20 A Yes.

21 Q And do you hold any position with Local 455?

22 A Yes.

23 Q And what is your position with Local 455?

24 A I'm the vice president.

25 Q And how long have you held that position?

1 A For about four years.

2 Q Did there come a time when you became famili-
3 ar with a company by the name of Emco Steel?

4 A Yes.

5 Q And on or about when did you first become
6 familiar with Emco?

7 A During September, 1975.

8 Q And would that be the beginning, middle or
9 the latter part of September?

10 A In the beginning.

11 Q All right.

12 And could you describe how you first be-
13 came familiar with Emco?

14 A Yes.

15 We had--one of my functions in the Local
16 is to help in the organizing activity, and one of our
17 members brought to our attention that there was a shop
18 unrecognized, and that some of our members were working
19 in it.

20 Q Did he mention the name of the shop to you?

21 A No, I don't believe that he did. I found
22 out, you know.

23 Q And how did you find out what the name of
24 the shop was?

25 A Well, I sent one of the committee guys to

1 investigate. His name was John Reed.

2 Q That was the committeeman?

3 A Yes.

4 Q And Mr. Reed was sent to investigate by you?

5 A Yes.

6 Q And did he investigate?

7 A Yes.

8 Q And what were the results of that investi-
9 gation?

10 A Well, he told me that--by his observation,
11 that it was like a structural shop, and there were like
12 two or three ~~men working in it, and he knew one of the~~
13 guys to be one of ~~our members~~.

14 Q And did he say who the man was?

15 A No.

16 Q And did he tell you the name of the shop?

17 A Yes.

18 Q And what was the name of the shop?

19 A Emco Steel.

20 Q And in connection with the information that
21 you received, did you take any action?

22 A Yes.

23 Q Could you tell me what action that you took?

24 A I went to the shop and I secured authoriza-
25 tion cards from two guys that were working.

1 Q All right.

2 Now, you say that you went to the shop?

3 A Yes.

4 Q When did you go to the shop?

5 Do you recall the day on or about when?

6 A Yes, September 15th.

7 Q All right.

8 Now, I show you--

9 MR. EDELMAN: I would like to have this
10 marked for identification before I show him anything

11 I would like to have this card marked as
12 General Counsel's Exhibit No. 6.

13 (Document marked General Counsel's Exhibit
14 No. 6 for identification, as of this date.)

15 Q I show you General Counsel's Exhibit No. 5
16 in evidence, and General Counsel's Exhibit 6, marked for
17 identification, and ask you if you have ever seen these
18 cards before.

19 (Documents handed to the witness.)

20 A Yes.

21 Q And could you tell me what they were and
22 what they are?

23 A Well, these are the cards that I asked these
24 two workers to sign.

25 Q That is G. C. 5 in evidence is Coli, and

1 G. C. 6, for identification is a John Frick?

2 A Yes.

3 Q All right.

4 Now, did you obtain those cards yourself?

5 A Yes.

6 Q And could you tell me the date that you ob-
7 tained those cards?

8 A The date that is marked here, 9/15/75.

9 Q All right.

10 And could you tell me where you obtained
11 these cards?

12 A In the yard, in the yard of where the com-
13 pany is.

14 Q Is that Emco?

15 A Yes.

16 Q And on or about what time were you in this
17 yard?

18 A I would say about 10:30, 11:00 o'clock.

19 Q All right.

20 So you came into the yard at 10:30 or 11:00
21 o'clock?

22 A Yes.

23 Q Now, could you tell me what you did when
24 you entered the yard?

25 A Well, first of all, I recognized Coli because

1 we worked together, and then, you know, I asked the guys
2 if they were willing to have Local 455 represent them.
3

4 Q Well, where was Coli and where was Frick
at this time?

5 A They were sitting down having coffee.

6 Q In the yard?

7 A Yes.

8 Q Both of them together?

9 A Yes.

10 Q And you say that you recognized Coli be-
11 cause you worked together?

12 A Yes, we worked together a few years ago.

13 Q What job was that?

14 A That was for G.L.G.

15 Q And that was a member of 455?

16 A Yes.

17 Q And are you familiar with the membership of
18 Local 455?

19 A Yes.

20 Q And as of September 15th, was Coli a member
21 of Local 455?

22 A Yes.

23 Q And there was another individual there, who
24 was John Frick?

25 A Yes.

1 Q In any event, the two of them were together?

2 A Yes.

3 Q All right. What did you do then?

4 A Well, I asked him to sign--I asked him to
5 sign the card and we had a discussion about the shop.

6 Q Well, tell me about the discussion that you
7 had.

8 A All right.

9 About the job that we had?

10 JUDGE SCHWARZBART: Let me clear it up.

11 THE WITNESS: All right.

12 JUDGE SCHWARZBART: You walked into the
13 yard.

14 THE WITNESS: Yes.

15 JUDGE SCHWARZBART: The date that you gave,
16 around what date was that?

17 THE WITNESS: 9/15/75.

18 JUDGE SCHWARZBART: All right.

19 Now, you walked into the yard--

20 THE WITNESS: Yes.

21 JUDGE SCHWARZBART: --whom did you see?

22 THE WITNESS: I saw Coli and Frick.

23 JUDGE SCHWARZBART: Had you know Frick
24 before?

25 THE WITNESS: No.

1 JUDGE SCHWARZBART: Could you relate the
2 conversation, how it began, who said what?

3 THE WITNESS: Well, first I asked him--
4 you know, it's very hard to remember the conversation.

5 I know that there was a discussion about
6 the job that the company had. They--

7 JUDGE SCHWARZBART: Let's backtrack a
8 little bit.

9 THE WITNESS: Yes.

10 JUDGE SCHWARZBART: When you walked in did
11 you greet anybody?

12 THE WITNESS: Yes.

13 Well, I recognized Coli right away. I
14 said hello to him.

15 JUDGE SCHWARZBART: Take it from there.

16 THE WITNESS: Right.

17 Let me see if I can remember any specific
18 conversation.

19 Coli told me that Jerry, which was one of
20 the owners--

21 MR. EDELMAN: Jerry Meisner?

22 THE WITNESS: Yes. At that time he was
23 one of our members, had been talking about joining the
24 Local, but he has never done anything about it, and then
25 we got into a discussion about the representation cards.

1 I asked him who else worked in there. They
2 said that Mr. McGovern worked in there.
3

4 - JUDGE SCHWARZBART: Who?

5 THE WITNESS: A guy by the name of McGovern,
6 and he was out.

7 They also told me that the boss was not in,
8 because I think that it was a holiday.

9 BY MR. EDELMAN:

10 Q Jewish holiday?

11 A Yes.

12 Q So that these two were the only ones there?

13 A Yes.

14 Frick, in specific, asked me what did this
15 mean, and I told him that.

16 Q When you say "what does this mean," you're
17 talking about G. C. 6 for identification?

18 A Yes --

19 Q All right.

20 A --and I said that that means that we would
21 be authorized to bargain for him. And I also asked him
22 to print his name on the back in order for us to send him
23 mailings, and they did.

24 Q And what about Coli; did you have any con-
25 versation with Coli in connection with the card?

A I can't remember that much, except that I

1 asked him to sign and he signed it.

2 Q All right.

3 And both employees were given cards by you?

4 A Yes.

5 Q And both employees signed the cards?

6 A Yes, signed it and gave it back to me.

7 I also told them that I would send a tele-
8 gram to the company and wait for their response.

9 Q Did you tell them anything about what the
10 telegram was to contain?

11 A No. I just mentioned that I was going to
12 send a telegram to the company.

13 Q All right.

14 After--by the way, did you see--did you
15 see Coli and Frick sign these cards?

16 A Did I see it?

17 Q Did you see them sign the cards?

18 A Yes.

19 Q Did they sign them in your presence?

20 A Yes.

21 Q Both of them?

22 A Yes.

23 Q Now, with respect to these cards, both
24 General Counsel's Exhibit 5 and General Counsel's Ex-
25 hibit 6--

1 A Yes.

2 Q --with the body of the card, were they filled
3 out by the individuals who signed them or were they filled
4 out by somebody else?

5 A No, they were filled out by me, except for
6 the date.

7 Q All right.

8 And the addresses on the cards, were they
9 filled out by you or were they filled out by the individu-
10 als who signed them?

11 A This appears to be mine, my writing, G. C. 5.
12 General Counsel's Exhibit 6 is done by --
13 the back was done by John.

14 Q All right.

15 A I asked him to do it.

16 Q Did Frick ask you any questions about what
17 the purpose of the card was?

18 A Yes.

19 Like I said before, he asked me what it
20 means and I told him that that would give us the right
21 to represent him

22 JUDGE SCHWARZBART: I'm sorry. You said
23 that John filled out the back of General Counsel's Exhibit
24 No. 67

25 THE WITNESS: Yes.

1 JUDGE SCHWARZBART: John who?

2 MR. EDELMAN: Frick?

3 THE WITNESS: Yes.

4 MR. PEARL: Frick is 6?

5 JUDGE SCHWARZBART: There was also a John
6 Reed, who was also in the testimony.

7 MR. EDELMAN: You'll never hear his name
8 again, Your Honor.

9 JUDGE SCHWARZBART: Well, I wouldn't know
10 that.

11 MR. PEARL: Off the record may I have the
12 answer read back on who wrote on the back?

13 JUDGE SCHWARZBART: Off the record.

14 (Discussion off the record.)

15 JUDGE SCHWARZBART: On the record.

16 BY MR. EDELMAN:

17 Q How, did--did McGovern ever sign an author-
18 ization card?

19 A No.

20 Q And did you attempt to have him--McGovern--
21 sign an authorization card?

22 A Yes.

23 Q Was McGovern a member of Local 455?

24 A Yes, and still is.

25 Q Still is?

* * *

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* * *

1 BY MR. EDELMAN:

2 Q All right.

3 With respect to G. C. 7 and G. C. 8, I ask
4 if you can tell me what they are?
5

6 (Documents handed to the witness.)

7 A This is the record from our union office
8 that shows payment of the dues.

9 Q For the employees named on the record, I
10 take it?

11 A Yes.

12 Q Who is that?

13 A Dano Coli.

14 Q All right. And that is General Counsel's
15 Exhibit No. 7?

16 A Yes.

17 Q Now, would you look at General Counsel's
18 Exhibit No. 8 and tell me what that is?

19 A Yes.

20 G. C. 8 is also a record from our union
21 office that shows payment of dues for Thomas McGovern.

22 Q And I would ask you if you would look at
23 the record and tell me if the dues were paid by both named
24 individuals, for the months of August, September, October,
25 November, 1975, and December of 1975?

A August?

1 Q Yes.

2 A November, December, yes; yes, for McGovern,
3 G. C. 8.

4 Q And that would be on Page 2 of the exhibit?

5 A Right.

6 Q All right.

7 A August, September, October, November, De-
8 cember, and yes, for G. C. 7.

9 Q Which would be that of --

10 A Page 2.

11 Q --of Coli?

12 A Yes.

13 Q On Page 2?

14 A Yes.

15 Q And those records indicate what with respect
16 to membership in the union with respect to the employees?

17 MR. PEARL: I object.

18 MR. ZISKIN: I object.

19 I think that the records speak for them-
20 selves. Counsel is calling for a conclusion on the part
21 of the witness.

22 MR. EDELMAN: I withdraw the question.

23 BY MR. EDELMAN:

24 Q Are they paid-up members in full of Local
25 455?

1
2 A Yes.

3 MR. ZISKIN: Again, I think that the re-
4 cords will reflect that answer and it calls for a con-
5 clusion on the part of the witness.

6 JUDGE SCHWARZBART: Two points. The records
7 have not been received. And until they are, they cannot
8 speak for themselves.

9 The witness who is testifying from them, I
10 think from the established rules of evidence, who is ex-
11 perenced, can testify to them, so I will overrule the
12 objection.

13 MR. PEARL: Your Honor, if the witness has
14 direct knowledge of the membership, he is--

15 JUDGE SCHWARZBART: Let me say something.

16 That is the foundation to be laid of busi-
17 ness records. Are records kept in the normal course of
18 business in your union?

19 THE WITNESS: Yes.

20 JUDGE SCHWARZBART: Okay.

21 I mean to say concerning payments of dues
22 received.

23 THE WITNESS: Yes, they are.

24 JUDGE SCHWARZBART: Who keeps these?

25 THE WITNESS: Well, there is a girl that
is in charge of the--that department.

* * *

1 THE WITNESS: Inked in?

2 What do you mean by that?

3 JUDGE SCHWARZBART: Well, you have a series
4 of printed months on the form, and with boxes--printed
5 boxes, dated, and then there is some sort of date, what
6 appears to be a date inked into each box.

7 THE WITNESS: Yes. That is the date that
8 the man made his payment.

9 That is the date that it shows that the man--
10 let's say, G. C. 7 shows that on December 16th a payment
11 was made for the month of December, for this member, Dano
12 Coli, and the number is shown up here, that is his mem-
13 bership number. (indicating)

14 JUDGE SCHWARZBART: Mr. Edelman.

15 MR. EDELMAN: Yes.

16 BY MR. EDELMAN:

17 Q Mr. Schifano, do you have personal knowledge
18 as to the membership of Mr. McGovern and Mr. Coli?

19 A Yes.

20 Q Are they members of Local 455?

21 A Yes.

22 Q And how long has Mr. McGovern, to your
23 knowledge, been a member of Local 455?

24 A Well, I don't know. I don't know him for
25 that long, but I know that he's been a member for over

1 two years in the Local.

2 Q Is he still a paid-up member?

3 A Yes.

4 Q He's been a member continuously of Local 455,
5 to your knowledge?

6 A Yes.

7 Q And how about Mr. Coli; how long has Mr.
8 Coli been a member of Local 455?

9 A Well, I've known him for eight years, and
10 I know he was a member during that time.

11 Q During the eight years that you have known
12 him--for the eight years that you have known him, you have
13 known him to be a member of Local 455?

14 A Yes.

15 MR. EDELMAN: I move that the documents
16 G. C. 7 and G. C. 8 be admitted into evidence.

17 MR. SCHWARZBART: Any objection?

18 MR. ZISKIN: I have not seen them.

19 (Mr. Edelman hands documents to Mr. Ziskin.)

20 MR. ZISKIN: I have a few questions, if
21 you don't mind, on voir dire.

22 JUDGE SCHWARZBART: Please proceed.

23 VOIR DIRE EXAMINATION

24 BY MR. ZISKIN:

25 Q Mr. Schifano, did you examine the files of--

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* * *

(Discussion off the record.)

JUDGE SCHWARZBART: On the record.

There will be a ten minute recess.

(Short recess taken.)

JUDGE SCHWARZBART: On the record.

I have been informed during an off the record discussion that the original records that the unions use and the representative from Local 455's office who is responsible for the preparation--maintenance of these records, will be available in the courtroom tomorrow.

Is that correct?

THE WITNESS: Yes, sir.

JUDGE SCHWARZBART: All right.

Mr. Edelman.

MR. EDELMAN: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. EDELMAN:

Q Mr. Schifano, after you secured the authorization cards from Mr. Coli and from Mr. Frick, what if any action did you take?

A I called the attorney's office and asked him to send a telegram to the Emco Steel Company asking for recognition of--

Q And did they send a telegram, to your

1 knowledge?

2 A Yes, they did.

3 Q And was the telegram received by the company,
4 to your knowledge?

5 A Yes.

6 Q I show you General Counsel's Exhibit--
7 Exhibit No. 4.

8 A Yes.

9 (Document handed to the witness.)

10 Q Is that the telegram that the attorney for
11 the union sent?

12 A Yes.

13 Q Following the sending and the receipt of
14 the telegram to Emco, what if any action did you take?

15 A Well, I waited a couple of days and then
16 I went to the plant with a prepared recognition agreement.

17 Q Now, you say that you went to the plant?

18 A Yes.

19 Q Were you alone?

20 A No.

21 Q Who was with you?

22 A I took with me Frank Hernandez.

23 Q Who is he, Frank Hernandez?

24 A He's a member of the executive board of
25 Local 455, and he's involved in the negotiations.

1 Q And on or about what date did you visit
2 Emco?

3 A Would I be allowed to look on my notes for
4 the dates?

5 Q Did you make notes as to the dates when you
6 were there?

7 A Yes.

8 Q Why don't you get your notes and we'll dis-
9 cuss the notes.

10 A All right.

11 Q Mr. Schifano, you have in your hand some yel-
12 low legal pad, is that correct?

13 A Yes.

14 Q Now, in connection with the yellow legal
15 pad, could you tell me what this is?

16 A These are notes of two negotiation sessions
17 that I had with the company, Emco Steel.

18 Q When were those notes made?

19 A During the session itself, during the nego-
20 tiation.

21 JUDGE SCHWARZBART: Who made them?

22 THE WITNESS: Excuse me, Your Honor?

23 JUDGE SCHWARZBART: Who made them?

24 THE WITNESS: Me. Your Honor, also I have
25 to get something else.

1 JUDGE SCHWARZBART: All right.

2 Q Now, you also--

3 A The question was--the question was the date
4 when I met him?

5 Q Yes.

6 Are you referring to a red diary type book?

7 A Yes.

8 Q Could you tell me what that is?

9 A Excuse me?

10 Q The book that you are referring to, what
11 is it?

12 A Yes, this is my appointment calendar.

13 Q And when did you make those entries?

14 A When I arrange for the meeting; in that par-
15 ticular case, when I went there.

16 Q All right.

17 MR. EDELMAN: Your Honor, I'm going to re-
18 quest that Mr. Schifano be able to look and refer to his
19 diary or his notes in connection with his testimony from
20 here on in, as they were made during the negotiation.
21 They are original notes that were made by himself.

22 JUDGE SCHWARZBART: Well, I'm trying to
23 determine, is Mr. Schifano going to testify from the
24 notes or is he going to merely look at them to refresh
25 his recollection?

* * *

1 possible, I would like to be able to look along with him
2 at the copy of the contract, even if it's not marked,
3 and that might be helpful for us to understand what he's
4 talking about because we would not have those documents
5 in front of us.

6 JUDGE SCHWARZBART: Any objections?

7 MR. EDELMAN: I have no objection.

8 I just want to make sure that I have a
9 complete set myself.

10 We have one copy, I believe.

11 Do you have another copy, Mr. Schifano?

12 THE WITNESS: Let me check.

13 MR. EDELMAN: All right.

14 Perhaps both of you can share one copy.

15 MR. PEARL: We'll sit together.

16 JUDGE SCHWARZBART: Off the record.

17 (Discussion off the record.)

18 (Short recess taken.)

19 JUDGE SCHWARZBART: On the record.

20 BY MR. EDELMAN:

21 Q Mr. Schifano, did there come a time when
22 you visited the Emco plant following your visit on the 15th?

23 A Yes.

24 Q And when did you next visit Emco?

25 A The same week, the middle, the last part

1 of the week.

2
3 Q Do you have the exact date if you consulted--

4 A No.

5 Q Fine.

6 A No, I don't know.

7 Q That you do not know?

8 A No.

9 Q All right.

10 Now, were you accompanied by anybody at that
11 time?

12 A Yes.

13 Q Who was that?

14 A Frank Hernandez, who is a member of the
15 executive board of Local 455.

16 Q Was your visit prior to the sending of the
17 telegram?

18 A No, it was following.

19 Q Following?

20 A Yes.

21 Q About what time did you visit--arrive at
22 the--did you arrive at the Emco plant?

23 A About mid-morning, 10:00, 10:30.

24 Q All right.

25 And did you meet with anybody from Emco?

A Yes.

1 And whom did you meet with?

2 A First I saw Jerry Meisner in the yard, and
3 then we went into the office and then I saw Cy.

4 Q When you saw Jerry Meisner in the yard,
5 did you have any conversation with him?

6 A Yes.

7 Q Could you describe that conversation?

8 A Yes.

9 We talked in general terms. He used to be
10 my foreman at one point.

11 Q At what shop was that?

12 A At G.L.G.

13 Q All right.

14 And what was your general conversation with
15 Mr. Meisner?

16 A I don't remember.

17 Q All right.

18 You then went into the office?

19 A Yes.

20 Q And Mr. Erney was there?

21 A Yes.

22 Q And did you have a discussion with Mr.
23 Erney and Mr. Meisner?

24 A Yes.

25 According to my lawyer's instructions, I

1 presented them with a document.

2 Q What was that document?

3 A It's a recognition agreement.

4 MR. EDELMAN: I would like to have this
5 document marked as General Counsel's Exhibit No. 9 for
6 identification.

7 (Document marked General Counsel's Exhibit
8 No. 9 for identification, as of this date.)

9 Q I show you General Counsel's Exhibit No. 9
10 marked for identification and ask you if you have ever
11 seen that before.

12 (Document handed to the witness.)

13 A Well, this is a copy of what I presented
14 them with.

15 Q All right.

16 A It's the standard form.

17 Q All right.

18 MR. EDELMAN: I show it to counsel for the
19 Respondent and counsel for the Party to the Contract, and
20 move that it be admitted into evidence.

21 JUDGE SCHWARZBART: Could I see it, please?

22 MR. EDELMAN: Yes.

23 (Document handed to Judge Schwarzbart.)

24 JUDGE SCHWARZBART: Any objections?

25 MR. PEARL: None.

1 JUDGE SCHWARZBART: Mr. Ziskin?

2 MR. ZISKIN: No objection.

3 JUDGE SCHWARZBART: All right, received.

4 (General Counsel's Exhibit No. 9 for iden-
5 tification received in evidence, as of this date.)

6 BY MR. EDELMAN:

7 Q Can you continue with your description as
8 to what took place at this meeting?

9 A Well, I presented him with that document
10 and I asked him to sign it and I asked him whether he
11 received our telegram and he said yes.

12 Q When you say "him," whom are you talking to?

13 A Most of the time I talked to Cy.

14 Q Now, when you refer to Cy, that is Mr.
15 Erney?

16 A Yes.

17 Other times Jerry talked.

18 Q And when you refer to "Jerry," you're re-
19 ferring to Jerry Meisner?

20 A Yes.

21 Q All right, continue with your description
22 of what took place.

23 A We had a general discussion about the in-
24 dustry and the job that he was doing, and he explained--

25 Q Mr. Erney?

1 A Yes, Mr. Erney explained to me -- can I
2 refer to him as Cy because that's the way that I know him?

3 Q All right.

4 A And he said that he was--that he was aware
5 of the cards, that the cards were signed by his employees,
6 and he wanted time to see his lawyer with that document.

7 He was not going to sign it then.

8 I asked for a meeting and he said, "Give
9 me a chance to talk to the lawyer and get back to me and
10 I'll get you a date for a meeting."

11 I remember Mr. Meisner asking me how to go
12 about withdrawing from the union. At that time he was
13 still a member.

14 He also asked me questions about what would
15 happen. He was actually working in the shop; would he
16 be allowed to work in the shop--that is Mr. Meisner--
17 he was actually working there--would he be allowed to
18 work there.

19 I told Cy that I didn't think that it was
20 legal for him to try to find out who signed or didn't
21 sign the card.

22 JUDGE SCHWARZBART: Well, did you answer
23 the question as to whether he could work in the shop?

24 THE WITNESS: Yes. I was not aware of
25 the procedure and so I called the office and they told

1 me to tell Jerry to send in a letter of resignation and,
2 in fact, he did, because I seen the letter later on.
3

4 Q Did you telephone the union from Emco?

5 A Yes, from the place.

6 Q From Emco?

7 A Yes.

8 Q At that particular meeting?

9 A Yes.

10 Q And did you get the answer from the union
11 at that particular time?

12 A Yes.

13 Q And did you relate it to Mr. Meisner at
14 that time?

15 A Yes.

16 Q Now--

17 A The only thing is, I gave him my card. My
18 card has the--the welfare office address, and he send the
19 letter to the welfare office and then the letter was re-
20 ferred to the union.

21 JUDGE SCHWARZBART: Okay.

22 Now, what was the next topic after that?

23 Q The next topic, I believe that there was
24 some discussion--a question asked of you regarding Mr.
25 Meisner working in the shop.

A Yes.

1 Q Did you respond to that?

2 A Well, I didn't respond because I thought
3 that this would be taken care of during negotiations.

4 Q Are you finished with your answer, Mr.
5 Schifano?

6 A Yes.

7 Q There was some--also some discussion that
8 you mentioned that took place in the meeting wherein
9 Mr. Erney--there was also some testimony that Mr. Erney
10 had said something regarding who had signed the cards.

11 A Yes.

12 Q My question to you now is, did you respond
13 to that question?

14 A Yes.

15 I told him that I thought that it was il-
16 legal for him to try to find out who signed the cards.
17 "Don't get involved in this kind of questioning of the
18 men. The men has the right to get the union when they
19 want."

20 Q Do you recall anything further that took
21 place at this meeting?

22 A We talked about his job. He had a job
23 that he was just about to start.

24 I believe that it was a firehouse and I was
25 anxious to start negotiations before this job finished

1 because it was the only job that the company had.

2 I wanted to make sure that we reached an
3 agreement before the job was--was finished.

4 Q All right.

5 Was this brought out by you or was this--
6 was this the reasoning that went on in your head?

7 A No, no, this was brought out.

8 Q To whom?

9 A To Cy and Jerry.

10 Q And did they respond?

11 A Yes. Well, they said, "As a matter of
12 fact, we had some discussion on that, too, in regard to
13 the funds."

14 They were worried about the fact that they
15 had bid on the job with no union and if, you know, they
16 figured, you know, if they had to pay into the funds, you
17 know, it would be to their disadvantage because they had
18 bid on a job at a certain price.

19 Q I see.

20 And did you respond to this?

21 A Yes.

22 Well, I--my response was that I wanted a
23 meeting as soon as possible, and I also reminded them
24 that both of them were previously involved with the union,
25 Cy being--Cy practically running G.L.G., and Jerry being
a member and a foreman, you know, that a lot of things

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1 would have to be done.

2 It was not like a new thing to them.

3 Q You're saying that Mr. Jerry Meisner was
4 practically running G.L.G. Was that a 455 shop?

5 A Yes, for many years.

6 Q And to your knowledge, Mr. Erney was at
7 one time, at least, was in active control or actively run-
8 ning the shop.

9 A Not actively running the shop, but the own-
10 er died, but my information is--I don't know for sure,
11 but my opinion is--

12 MR. PEARL: Your Honor, I would object as
13 to the witness' opinions.

14 JUDGE SCHWARZBART: I am going to sustain
15 this.

16 MR. PEARL: It seems to be going far apart
17 from the line also.

18 JUDGE SCHWARZBART: Well, I'm going to sus-
19 tain the objection to the extent that you were testify-
20 ing as to matters in which you were not certain.

21 Now, on several occasions during your testi-
22 mony, you have made some reference to G.L.G.

23 THE WITNESS: Yes.

24 JUDGE SCHWARZBART: Could you explain,
25 please, what is G.L.G., where they are located, what was

1 your period of acquaintance with that concern?

2 THE WITNESS: Well, G.L.G. is mainly--
3 was on Metropolitan Avenue.

4 JUDGE SCHWARZBART: That's in what borough?

5 THE WITNESS: In Brooklyn.

6 I don't remember the number, Your Honor.

7 JUDGE SCHWARZBART: It's located in the
8 neighborhood of --

9 THE WITNESS: Right.

10 JUDGE SCHWARZBART: Of Emco?

11 THE WITNESS: Right.

12 JUDGE SCHWARZBART: Do you know the full
13 name of G.L.G.?

14 THE WITNESS: No.

15 JUDGE SCHWARZBART: All right.

16 THE WITNESS: I don't know whether it's
17 Inc., or Corporation.

18 JUDGE SCHWARZBART: All right.

19 And for how long have you been familiar
20 with that corporation?

21 THE WITNESS: With G.L.G.?

22 JUDGE SCHWARZBART: Yes.

23 THE WITNESS: I worked for it--

24 JUDGE SCHWARZBART: --During which period?

25 THE WITNESS: I think that it was in '71

1 for about three or four months.

2 JUDGE SCHWARZBART: Which months?

3 THE WITNESS: Excuse me?

4 JUDGE SCHWARZBART: During which months?

5 THE WITNESS: The winter months.

6 I think that it was--I think that it was
7 January through May.

8 JUDGE SCHWARZBART: I see.

9 And while you were at G.I.G., you testified
10 that there were certain persons connected with this case
11 whom you knew.

12 THE WITNESS: While -- yes, Jerry was the
13 foreman and Cy was the estimator of the company.

14 JUDGE SCHWARZBART: I see.

15 Do you know whether G.L.G. had any contracts
16 with unions?

17 THE WITNESS: Yes. It had a contract with
18 Local 455.

19 JUDGE SCHWARZBART: I see.

20 Mr. Edelman.

21 MR. EDELMAN: Yes.

22 BY MR. EDELMAN:

23 Q We last left off the testimony in connec-
24 tion with the meeting, in connection with testimony con-
25 cerning payments to the funds, deferring payments to the

1 fund.

78a

2 A Yes.

3 Q Was there anything else said at this meeting
4 following this discussion?

5 A Well, I replied that this would be up for
6 negotiation and whenever we get to it, that we will see
7 what, you know, what we get with it.

8 Cy was very--wanted to get to a price, what
9 we could do for him, you know, not to pay all at once.

10 Q Anything further that you can recall that
11 took place at this first meeting?

12 A No.

13 I remember Cy showing me the place, that's
14 it.

15 Q All right.

16 At this time were there arrangements made
17 for holding the subsequent meeting?

18 A No.

19 I think that I called it, because he was
20 going to go up to his lawyer's and his lawyer was going
21 to advise him on that piece of paper that I gave him.

22 Q That recognition agreement?

23 A Yes.

24 Q Did you advise--did you contact either Mr.
25 Meisner or Mr. Erney in connection with a second meeting?

1 A Yes, I think that it was done through the
2 office.

3 Q I see.

4 Now, was there, in fact, a subsequent meeting?
5

6 A Yes.

7 Q And do you have the date of this meeting,
8 the date that this meeting took place?

9 A Yes, I do.

10 Q What is that?

11 A 9/22/75.

12 Q All right.

13 And could you tell me where this meeting
14 took place?

15 A In the office.

16 Q In the office of Emco Steel?

17 A Correct.

18 Q And could you tell me about what time that
19 the meeting took place?

20 A We started about 10:30 in the morning.

21 Q All right.

22 And could you tell me who was present at
23 the meeting?

24 A Yes. It was me, Mr. Hernandez, Mr. Erney
25 and Jerry.

Q And could you describe for us, please, what

1 place at this meeting?

2 A Well, I asked Cy whether he--during the
3 telephone conversation we set up the meeting. He indi-
4 cated to me that he wanted to see the union proposals,
5 so I brought in three documents to him, a standard in-
6 dependent contract that expired June 30, 1975, a set
7 of union proposals dated July 1, '75, and a stipulation
8 that was being signed by other employees in the industry.

9 Q All right.

10 MR. EDELMAN: I would like to have them
11 marked as General Counsel's Exhibit 10-A, B, C.

12 JUDGE SCHWARZBART: Which is it?

13 MR. EDELMAN: Well, I don't really care,
14 whichever order that I give them to her.

15 I'll start with the stipulation.

16 The stipulation is A.

17 THE WITNESS: If you--are you going to
18 put them into--

19 MR. EDELMAN: I'm going to put it back.

20 THE WITNESS: All right.

21 MR. EDELMAN: Make the agreement 10-A then.

22 (Document above referred to marked General
23 Counsel's Exhibits 10-A for identification, as of this
24 date.)

25 MR. EDELMAN: The proposed agreement would

1 be 10-B, and the certificate would be 10-C.

2 (Documents above referred to marked General
3 Counsel's Exhibits No. 10-B and 10-C for identification,
4 as of this date.)

5 BY MR. EDELMAN:

6 Q Okay. You stated that you gave Mr. Erney
7 three documents.

8 A Yes.

9 Q And did you see those documents before you?

10 A Yes.

11 Q And what are they?

12 A One is G. C. 10-A, that is the agreement.

13 Q All right.

14 A G. C. 10-B is the proposals, and G. C. 10-C,
15 that is the stipulation.

16 Q All right.

17 Now, could you explain to the Court exactly
18 how the three documents are to be incorporated so that
19 they reflect the union's proposals?

20 A Right.

21 Well, G. C. 10-A is the agreement that we
22 had with the industry in general, up to June 30, 1975.

23 Q All right.

24 A G. C. 10-B is a set of union proposals that
25 was presented to the--to the industry in general around

1 May of '75.

2 G. C. 10-C is a stipulation--10-C is a
3 stipulation--a copy of a stipulation that was entered
4 into agreement with some companies after July 1. '75.

5 Q Well, how would one determine what the
6 proposals were?

7 A Yes.

8 The stipulation, as part of the--it refers
9 to the proposals and the agreement, as part of the pro-
10 posal was kept, and it was entered into the contract
11 and the stipulation will say so.

12 Q I take it that the proposals only relate
13 to certain sections of the contract?

14 A Yes.

15 Q With respect to the sections that the pro-
16 posals do not relate to, that was--the proposal as was
17 being set forth as stipulated in the main agreement?

18 A Yes.

19 The stipulation says that the contract that
20 was effective July 1, 1973, be extended to 6/30/76--

21 Q Would it be fair--

22 A --with a fair modification.

23 Q Would it be fair to say that the proposals
24 with the contract were G. C. 10-A as modified by the
25 proposals in G. C. 10-B and summarized by the stipulation,

1 G. C.--G. C. 10-C?

2 A Well, some added to it, like the wages were,
3 you know. Over here it tells about a substantial increase.

4 Over here we have the--

5 With the actual wages?

6 A Yes, right.

7 JUDGE SCHWARZBART: If I have to under-
8 stand it myself, I believe that you stated that the pro-
9 posals were given to the industry in May of '75?

10 THE WITNESS: Yes.

11 JUDGE SCHWARZBART: And then these are now
12 matters that would have been embraced in 10-A?

13 THE WITNESS: No. That contract expired
14 in June of '75.

15 JUDGE SCHWARZBART: All right. I've got
16 it. I see I have the dates wrong.

17 BY MR. EDELMAN:

18 Q In any event, you handed the three docu-
19 ments to Mr. Erney; is that correct?

20 A Yes, and I had a set of three here.

21 Q These are the three that are marked that
22 you actually used in connection with the negotiations?

23 A Yes.

24 Q Those are the originals?

25 A Yes, right.

1 Q Now, could you describe what took place at
2 this meeting?

3 A Well, Cy started to say that his main con-
4 cern was to the economic picture, and I explained to him
5 that we would have to go through the contract, paragraph
6 by paragraph, and section by section, in order to find
7 out which part of the contract was bothering him economic-
8 ally and otherwise, and which parts they agreed to.

9 I explained to him that this is normal
10 procedure when you negotiate a contract, to use a set
11 of proposals or contracts, and you go through it.

12 That's how we started.

13 We went through each one of them sections.

14 Q All right.
15 Describe exactly what took place at these
16 sessions.

17 THE WITNESS: I have to refer to my notes,
18 Your Honor, because it's paragraphs and part of it is
19 agreed to and part of it is not.

20 JUDGE SCHWARZBART: That's understood.

21 THE WITNESS: Excuse me?

22 JUDGE SCHWARZBART: That's understood.

23 THE WITNESS: All right.

24 A The first part of the section is entitled,
25 "Preamble," and Cy's response to that was that he would

1 have to read it.

2 JUDGE SCHWARZBART: Pardon?

3 Repeat that.

4 THE WITNESS: That he didn't understand
5 it, that he would have to read it again.

6 Section 1, Cy agreed to it.

7 Q Section 1 is bargaining unit?

8 A Yes.

9 Q Was there any discussion concerning that?

10 A No. He read it and he said, "Okay."

11 And he marked "okay."

12 I advised him to take notes.

13 Q During these sessions?

14 A Yes, and he marked okay and I marked okay,
15 and I wrote it down on the paper.

16 Q You testified that you advised him to take
17 notes?

18 A Yes.

19 Q During the course of this meeting and the
20 subsequent meeting that took place, did you observe
21 whether or not Mr. Erney took notes?

22 A Yes, he did.

23 Q He did?

24 A Yes.

25 Q All right. Could you continue with the--

1 A Yes.

2 Q --description as to what took place in the
3 meeting?

4 A Section 2, there was some discussion--that
5 is the International approval of the contract as to form.

6 Cy thought that the International had some
7 say, and I said, "Only as to form, nothing else."

8 JUDGE SCHWARZBART: I'm sorry, I couldn't
9 understand you.

10 What is Section 2?

11 THE WITNESS: Section 2 is "International
12 Union."

13 Q What was Mr. Erney's concern?

14 A That the International might not agree to
15 what we agreed--to what we agree, so I explained to him
16 that this is only as to form, and he said "Okay."

17 Q Was there an agreement as to Section 2?

18 A Right.

19 Q All right.

20 A Section 3, Cy read it, "okay."

21 Q Section 3 is union recognition?

22 A Yes.

23 Q Now, was there any discussion at all as to
24 union recognition?

25 A No.

1

2

Q Did Mr. Erney say anything about that?

3

A No.

4

Q He indicated agreement?

5

A Right.

6

Q And with respect to Section 4, was that discussed?

7

8

A Section 4 is union security.

9

The company agreed to it.

10

Q Do you recall any discussion or any comments by either Mr. Meisner or by Mr. Erney in connection with this section?

11

12

13

A No.

14

Q Okay.

15

Now, Section 5?

16

A Section 5 is checkoff dues.

17

18

19

20

21

Cy was concerned about having to take care of, or pay the dues, and I told him that the men can pay their own dues, you don't have to do it, but if the company wants the company to do it, it's only a bookkeeping problem.

22

23

At the end of the discussion he agreed to it.

24

Q All right.

25

Now, was Section 6 discussed at this session, "Hours of Work"?

1
2 A Yes. Cy didn't understand our language.
3 I don't blame him because--and we left it open.

4 JUDGE SCHWARZBART: Section 6 was which?

5 THE WITNESS: "Hours of work."

6 We have a provision for thirty-six hours
7 and for the three shifts and Cy didn't understand that.

8 Q Was there any discussion as to this section?

9 A Yes.

10 We went over it a couple of times.

11 I tried to explain that it was only language
12 and it would not affect the hours of work of the men,
13 and he just didn't--didn't like it.

14 He said that they would force him into a
15 thirty-seven and a half hours work week.

16 Q All right.

17 And what was the proposed work week that
18 the union was proposing?

19 A The union was proposing a thirty-seven and
20 a half hour work week, but with the provision that the
21 company will maintain the forty hours if the company so
22 desires or wishes.

23 Q Mr. Erney was concerned about that section?

24 A Yes. The language is complicated there
25 and it was very hard to explain it to him.

Q And was Section 7 discussed, "Overtime Pay"?

1 A Yes.

2 He read it and he okayed it.

3 Q All right.

4 And how about Section 8, "Holidays"?

5 A Section 8, we had a discussion on which--
6 on which day to--he agreed to an additional holiday be-
7 sides the thirteen that we had in the 10-A, but we couldn't
8 agree as to which one it would be, the holiday.

9 Oh, I have my notes over here which says,
10 Okay the holiday before the birth."

11 I don't know what that means.

12 I don't remember, Your Honor.

13 Q Well, what was the upshot of this--of the
14 discussion in connection with holidays at this session?

15 A Well, the company agreed to the fourteen
16 holidays, but the discussion was as to which one would
17 be the additional one.

18 Q There were thirteen that were set; is that
19 correct?

20 A Yes.

21 Q They were set out when, in the initial con-
22 tract, is that correct?

23 A Yes.

24 Q Was there any discussion as to--

25 A And I remember now that I suggested that

1 they wait for the rest of the industry to--because usual-
2 ly we like to keep it equal.

3
4 At that time we had a strike with a group
5 of employers and we just--if we get the holiday then we
6 would have a uniform holiday for the whole industry,
7 but I have this note, I don't know what it means.

8 Q Is that what you recall what you said to Mr.
9 Erney, or is this what you are telling us now what you
10 just said?

11 A No, I recall that I said that to him.

12 Q All right.

13 Is there any other conversation that you can
14 recall in connection with the holidays?

15 A No.

16 Q All right.

17 Was Section 9, "Reporting Pay and/or Allowed
18 Pay" discussed?

19 A Yes. The company--Cy agreed to A, B and C.

20 Wait a minute--

21 JUDGE SCHWARZBART: What is that?

22 THE WITNESS: I have to refer to this,
23 Your Honor, because we changed some things.

24 JUDGE SCHWARZBART: Okay.

25 A The company agreed to the--to rephrase some
of Section A. Wait a minute. It's very confusing--"A,"

1 "B," and "C" of the 10-A, with the union proposal and
2 subsection "A."

3 Q You are referring--when you refer to sub-
4 section "A," which document are you referring to that
5 would replace "A" in the old contract?

6 A I said that we had some changes.

7 We proposed some changes here.

8 JUDGE SCHWARZBART: We're talking about
9 which section of G. C. 10 now--9 -- we're talking about
10 9-A?

11 THE WITNESS: Yes.

12 JUDGE SCHWARZBART: 9-A, B and C?

13 THE WITNESS: Yes.

14 JUDGE SCHWARZBART: Now, what happened?

15 THE WITNESS: Cy only agreed to the D of
16 the 10-A, and we left open A, B, and C, on the proposals.

17 JUDGE SCHWARZBART: So there was no agree-
18 ment with regard to 9-A, B, and C?

19 THE WITNESS: Right.

20 JUDGE SCHWARZBART: But there was agree-
21 ment with 9-B?

22 THE WITNESS: Right.

23 BY MR. EDELMAN:

24 Q Was there any discussion with this?

25 A Yes. I believe that this is the clause

1 that -- well, one of the provisions in this clause is that
2 if the union sends someone to the shop in response to our
3 request to the company, the company will, if it's not
4 acceptable to the company, the company will pay for ex-
5 penses, and Cy disagreed with that. Okay?

6 JUDGE SCHWARZBART: Which provision was
7 that?

8 THE WITNESS: C of the union proposal,
9 which is in this stipulation.

10 Of all of the proposals, we kept A and C
11 and D, but by the company C and A were not agreed to.

12 Q How about B?

13 A B was replaced.

14 Q I see.

15 A B was replaced by the new stipulation.

16 Q I see.

17 Was this new stipulation, B, agreed to?

18 A No, it just replaced the whole B.

19 Q Was it stricken?

20 A It was knocked out.

21 Q I see.

22 Was there any discussion with respect to
23 Section--Section 10-Grievances and Arbitration provision?

24 A In Section 10?

25 Q Yes.

1 A Well, Section 10 is one of the places where
2 the company tried to--Cy wanted, because of his past ex-
3 perience in G.L.G., he explained to me that he wanted to
4 know and practically say who the steward was going to
5 be, and we entered into a discussion with that with--and
6 we had a lengthy discussion, and I told him--even Jerry
7 talked about this, and that this was--was not for bargain-
8 ing, that the shop was a small shop anyhow, probably
9 won't have any shop steward, and I was not willing to
10 let the company have a say on which one would be the shop
11 steward.

12 Q What did Mr. Meisner and Mr. Erney, or
13 Mr. Meisner or Mr. Erney say about this?

14 A Well, he kept saying he remember from
15 G.L.G., they used to get drunk and used to give me a lot
16 of problems, and we cannot work together, and it was
17 always a problem. And Cy also gave me the same kind of
18 a language that they practically wanted to know who was
19 to be the shop steward before they agreed to Section 13.

20 Q Section 10?

21 A Yes, Section 10.

22 Q Was there any agreement reached as to
23 either Section A or B?

24 A No. He agreed to the whole agreement, but
25 he wanted to know who the shop steward would be.

1 Q How, was there any discussion with respect
2 to Section 11, "Strikes and Lockouts"?

3 A Yes.

4 First, the company asked for time to read
5 it because they didn't understand it, but then they okayed
6 it.

7 Q All right.

8 A After I explained to them, I explained to
9 Cy what it was all about.

10 Q What did you tell him?

11 A I don't remember anything in particular.
12 I see here that I have in my notes that the company will
13 read it and it's knocked out, and then it says "okay."

14 Q Do you recall that there was some discus-
15 sion on it?

16 A No.

17 Q You don't?

18 A No, I don't remember.

19 Q Well, then pass on to Section 12, "Plant
20 Visitation."

21 A Yes.

22 Q Was that discussed at all?

23 A Yes.

24 Q And do you recall what the discussion on
25 that was?

1 A Well, the company--Cy explained to me that
2 the shop--that the way that the shop was situated, anyone
3 could walk into the yard where the men were working and
4 the company would not know about it.

5 So they wanted some kind of language where
6 if a union representative would go into the shop, to notify
7 them.

8 At first they wanted to be notified before
9 anyone came into the shop, but then we agreed that we
10 had--we added the following language, and it was provided
11 by Cy. "Company representatives should be notified when--
12 prior--when--prior to the union rep entering the shop."

13 Q That was Mr. Erney's proposal?

14 A Yes.

15 Q Those were his words?

16 A Yes.

17 Q And you added them to this section?

18 A Yes.

19 We both added them to this section.

20 Q And I take it there was agreement on this
21 section?

22 A Yes.

23 Q With that modification--

24 A Yes.

25 Q --the wording?

1
2 A Yes.

3 Q Was there any discussion in connection with
4 Section 13, "Seniority"?

5 A Yes. He read it--Cy read it and he agreed
6 to part of it.

7 This other part, we left it open.

8 Q All right. Would you tell us what parts
9 were agreed to and what parts were left open?

10 A I'll give it to you according to my notes.

11 The company agreed to "B," "C," "D," "F,"
12 "G," "H", and "I" and asked time to read the paragraph
13 "A" and "B"--"A" and "E"

14 Q Was there any discussion in connection with
15 any of the sections agreed to or in connection with any
16 of the sections that were agreed to be left open--

17 A Let's see.

18 Q --that you can recall.

19 A Yes.

20 We had a discussion on the promotion clause.

21 Q Which clause?

22 A The promotion clause.

23 Q Which is what section of 13?

24 A It's "B."

25 Q "B"?

A Yes.

1 Q What was your discussion?

2 A Well, Cy didn't understand it, so I explained
3 it to him, what was the thirty days, and in the case of
4 a layoff, you know, I would work out, if he wanted to
5 promote somebody and then he agreed to it.

6 Q Well, what in particular troubled Mr. Erney?

7 A I don't know. I don't remember.

8 I remember that it was in connection with
9 Jerry, but I don't remember exactly. But I remember that
10 we talked about this promotion thing.

11 Q And you explained it?

12 A Yes.

13 Q And was it agreed to or not?

14 A Yes.

15 Q That was one of the things that was agreed
16 to?

17 A Yes.

18 Q Were there any sections that were discussed
19 that were not agreed to?

20 A Yes--that we discussed? No, because--be-
21 cause Cy read the whole clause--

22 Q Right.

23 A --and he asked for "A," and--"A," and "E,"
24 that he wanted time to read it.

25 He didn't understand it. He okayed--he
okayed all of the others.

1 We had a discussion on the promotion.

2 Q All right.

3 Now, in connection--

4 A We also had a discussion on--on the seniority list. Cy said, "Listen, I don't have any secretary here. Why should I post a new list every time if I don't have any new employees?"

5 And I told him that that was not necessary.

6 Q This was part of the seniority proposals?

7 A Yes.

8 Q Now, in connection with Section 14, "Leave of Absence," was that discussion during this session?

9 A Yes.

10 Q Would you tell us what was discussed there?

11 A Leave of absence, for some reason Cy thought that it meant that the company had to pay.

12 I'm talking about Section "B."

13 He read the whole thing and he agreed to everything in Section "B."

14 Q All right.

15 A And somehow, he thought that the company would have to pay for an official if he was appointed or elected to a union position, so we left it with him and I told him that his application would be to grant a leave of absence, but that was all.

1 Q Was there any agreement as to the leave of
2 absence, any parts agreed to?

3 A Yes.

4 Q Which parts were agreed to?

5 A Section "A" -- I'm sorry, Paragraph "A,"
6 "C," and "D."

7 Q And "D"?

8 A Yes.

9 Q Okay.

10 A We had some discussion about that, too,
11 that the company--Cy didn't think that it was fair to
12 pay anyone three days'--you know, leave, if there was
13 a death during the weekend of something, a death in the
14 family, but he finally agreed to it.

15 JUDGE SCHWARZBART: Off the record.

16 (Discussion off the record.)

17 JUDGE SCHWARZBART: On the record.

18 MR. EDELMAN: Your Honor, I wonder if I
19 could call Mr. Frick in at this point, so that he could
20 be reminded that he is under subpoena and that he will
21 be recalled tomorrow?

22 JUDGE SCHWARZBART: All right.

23 MR. EDELMAN: Thank you.

24 (Mr. Frick entered the hearing room.)

25 JUDGE SCHWARZBART: Before concluding for

1 has left it to my discretion, I am going to grant
2 leave to call Mr. Zito out of turn, out of order, for
3 the purposes of limited inquiry on direct-examination.

4 MR. EDELMAN: Very well, your Honor.

5 I appreciate the courtesy.

6 JUDGE SCHWARZBART: Mr. Zito.

7 Whereupon, JOHN ZITO, was called as a
8 witness, and having been first duly sworn by the
9 Administrative Law Judge, was examined and testified
10 as follows:

11 DIRECT-EXAMINATION

12 BY MR. EDELMAN:

13 Q Would you please state your full name for the
14 record?

15 A John Zito.

16 Q What's your address, Mr. Zito?

17 A 853 Broadway, New York, New York 10003.

18 Q Mr. Zito, do you hold any position with
19 Local 4557

20 A Yes.

21 Q What's your position?

22 A I'm the Financial Secretary-Treasurer.

23 Q And how long have you held this position?

24 A 12 years.

25 Q And as -- can you describe for me your duties

* * *

1 in general in connection with this position?

2 A Well, first of all, I'm in charge of the
3 office.

4 I maintain all of the records, the
5 financial records of the union.

6 I'm, also, in charge of the hiring, the
7 dispatching of employees to jobs.

8 I, also, service some shops as far as
9 negotiations, contracts.

10 I'm, also, trustee on the funds. A lot
11 of functions.

12 Q If an individual were a member of Local 455
13 and wanted to withdraw membership, who would they
14 speak to in the union about that?

15 A They would speak --

16 MR. ZISKIN: Objection.

17 MR. PEARL: Objection.

18 MR. ZISKIN: Objection as to relevancy.

19 MR. EDELMAN: Subject to connection. I
20 will connect it.

21 JUDGE SCHWARZBART: There's been testimony
22 with regard to withdrawal from union membership in
23 Local 455 earlier in this proceeding.

24 I'll overrule the objection.

25 BY MR. EDELMAN:

1 Q You may answer the question.

2 A They would speak to me.

3 Q Okay.

4 Now, Mr. Zito, do you recall any conversation
5 in connection with a member by the name of Gerald or
6 Jerry Meisner concerning withdrawal from Local 455?

7 A Yes, I do.

8 MR. PEARL: Your Honor --

9 JUDGE SCHWARZBART: I'm going to sustain.
10 the objection.

11 It's leading.

12 MR. EDELMAN: I'll rephrase the question.

13 BY MR. EDELMAN:

14 Q Do you recall any conversations with any
15 representative from Local 455 concerning Gerald Meisner?

16 MR. ZISKIN: I'm going to object as to
17 relevancy.

18 I presume that Mr. Zito is going to
19 testify to a conversation that he may have had with
20 Mr. Schifano.

21 I think it's irrelevant to the proceeding.

22 MR. EDELMAN: I think, your Honor, it
23 bears on the credibility.

24 It tends to corroborate Mr. Schifano's
25 testimony that he was at the shop and that he made the

1 THE WITNESS: Yes, sir.

2 JUDGE SCHWARZBART: Mr. Edelman.

3 DIRECT-EXAMINATION (CONTINUED)

4 BY MR. EDELMAN:

5 Q Mr. Zito, do you recall having a conversation
6 with Gerald Meisner?

7 A Yes, I do.

8 MR. ZISKIN: Objection as to relevancy.

9 JUDGE SCHWARZBART: I believe there's been
10 earlier testimony with regard to this by Mr. Schifano.

11 Overruled.

12 BY MR. EDELMAN:

13 Q Do you recall on or about when the conversation
14 took place?

15 A I think it must be in late September or the
16 beginning of October.

17 Q Do you recall what time of day the conversation
18 took place?

19 A I believe it was in the morning.

20 JUDGE SCHWARZBART: What year was this?

21 THE WITNESS: 1975.

22 JUDGE SCHWARZBART: Okay.

23 BY MR. EDELMAN:

24 Q Can you describe, Mr. Zito, the telephone call
25 for us, exactly what took place?

1 A Yes.

2 Tony Schifano called me from -- and he
3 says --

4 MR. ZISKIN: Objection.

5 JUDGE SCHWARZBART: I believe there was --
6 I believe you're testifying concerning a telephone
7 conversation that you had with Mr. Meisner.

8 THE WITNESS: Yes.

9 I'm saying how that conversation came
10 about, because Tony Schifano asked me a question.

11 MR. ZISKIN: Objection.

12 JUDGE SCHWARZBART: Wait a second.
13 There's an objection.

14 THE WITNESS: Oh.

15 JUDGE SCHWARZBART: Why don't you describe
16 the telephone conversation with Mr. Meisner.

17 THE WITNESS: Sure.

18 JUDGE SCHWARZBART: -- which was asked
19 of you, and then we'll consider the relevancy of
20 background.

21 MR. EDELMAN: I think, your Honor, it's --
22 not to put something in a vacuum, but I think it's
23 important to know how the conversation came about
24 without --

25 JUDGE SCHWARZBART: Well, why don't we

1 have the conversation first and then we'll have the
2 background.

3 MR. EDELMAN: Very well, your Honor.

4 A Jerry Meisner got on the phone. Jerry
5 Meisner asked me a question that he had previously
6 discussion with someone else.

7 He asked me a question --

8 JUDGE SCHWARZBART: Well, Mr. Zito, what
9 did he say to you and what did you say to him?

10 Who initiated the call?

11 THE WITNESS: Tony Schifano called me
12 from the shop.

13 JUDGE SCHWARZBART: Wait a second.

14 Who called you at the time -- who placed
15 the call to you --

16 THE WITNESS: Tony Schifano did.

17 JUDGE SCHWARZBART: At that moment?

18 THE WITNESS: Yes.

19 JUDGE SCHWARZBART: Okay.

20 THE WITNESS: And he then put -- he asked
21 me a question.

22 He then put Jerry Meisner on the phone.

23 JUDGE SCHWARZBART: So let's take the
24 whole transaction from the beginning in that context.

25 THE WITNESS: Yes.

1 JUDGE SCHWARZBART: Mr. Schifano placed
2 a call to you one day in late September or early
3 October of 1975?

4 THE WITNESS: Yes.

5 JUDGE SCHWARZBART: What did Mr. Schifano
6 say to you?

7 THE WITNESS: He said, "I'm here talking
8 to Jerry Meisner at the shop and Jerry Meisner wants
9 to know how he can get a withdrawal card from
10 Local 455."

11 JUDGE SCHWARZBART: Okay.

12 Then did anybody else say anything?

13 THE WITNESS: Then I explained to Jerry
14 Meisner what --

15 JUDGE SCHWARZBART: Wait a second.

16 What happened after Schifano made that
17 statement?

18 THE WITNESS: Oh.

19 He then put Jerry Meisner on the phone.

20 JUDGE SCHWARZBART: Okay.

21 Then what happened?

22 THE WITNESS: I know Jerry Meisner. I
23 recognized his voice because I had spoken to him
24 many times.

25 Jerry Meisner said, "John, how do I go about

1 withdrawing from Local 455? I'm in business and I
2 want to withdraw."

3 I said, "The only way you can get a
4 withdrawal card at the present time from our
5 International is that you have to send me something
6 on your letterhead stating that you're going into
7 business and you would like to withdraw from Local 455."

8 He said, "Okay, John, I'll do that."

9 Subsequently to that he sent a letter,
10 and we got the withdrawal card for Jerry Meisner from
11 Local 455.

12 I have a copy of the same kind of a card
13 from our machine which shows when the withdrawal
14 card was issued in October.

15 BY MR. EDELMAN:

16 Q Do you have that copy with you?

17 A A copy of the card?

18 Q Of the withdrawal card.

19 A Not a copy of the withdrawal card, I have a
20 copy of the same kind of card that's in the machine
21 saying that a withdrawal card was issued to Jerry
22 Meisner.

23 MR. ZISKIN: Your Honor, I don't know
24 that this is relevant. I don't know that anybody is
25 raising an issue as to whether Mr. Meisner withdrew or

CSA Reporting

* * *

1 Q You have custody of the records?

2 A I do.

3 Q You examine the records from time to time?

4 A I do.

5 Q Are you familiar with what the records are
6 all about?

7 A Sure.

8 Q I ask you to look at General Counsel's
9 Exhibit 11 marked for identification, and tell me
10 what that is?

11 (Handing.)

12 A Yes.

13 This is the card from our Cardex machine for
14 Jerry Meisner, #491132.

15 Q And can you tell me what, if anything, the
16 card indicates to you?

17 A Yes.

18 The card indicates to me that he became a
19 member of our local in -- on April 23rd, 1952 and a
20 withdrawal card was issued to Jerry Meisner on
21 October 31st, 1975.

22 MR. EDELMAN: I move the card be admitted
23 into evidence.

24 I have no further questions of this witness.

25 MR. ZISKIN: I object purely on relevance.

* * *

CSA Reporting

* * *

1 employer.

2 Not everyone gets a withdrawal card,
3 unless, you know, you're going to fit in that
4 category.

5 MR. PEARL: I have no further questions.

6 JUDGE SCHWARZBART: Mr. Ziskin?

7 MR. ZISKIN: I have no question.

8 JUDGE SCHWARZBART: Mr. Edelman?

9 MR. EDELMAN: I have no further
10 questions, your Honor.

11 JUDGE SCHWARZBART: Thank you, Mr. Zito.

12 THE WITNESS: Thank you, sir.

13 (Witness excused.)

14 JUDGE SCHWARZBART: Mr. Schifano, please
15 resume the witness stand.

16 Let me remind you, sir, you are still
17 under oath.

18 THE WITNESS: Yes, your Honor.

19 DIRECT-EXAMINATION (CONTINUED)

20 BY MR. EDELMAN:

21 Q Mr. Schifano, when we left off yesterday, I
22 believe we had just concluded discussions with
23 Sections 14 of an agreement.

24 A Yes, sir.

25 Q On the September 23rd meeting.

1 A Right.

2 Q Directing your attention again to that meeting,
3 I ask you if you recall whether or not Section 15 of
the union's proposals were discussed at that meeting?

5 A They were not discussed, Sy read the clause
6 and he okayed it, every paragraph.

7 Q That section deals with nondiscrimination?

8 A Nondiscrimination, right.

9 MR. PEARL: Your Honor, a request?

10 JUDGE SCHWARZBART: Yes.

11 MR. PEARL: I had certain papers in front
12 of me yesterday which enabled me to follow this
13 testimony, and I would like to have them in front of
14 me again.

15 MR. ZISKIN: Right.

16 I agree.

17 THE WITNESS: Can I get off the witness
18 stand?

19 JUDGE SCHWARZBART: Surely.

20 Off the record.

21 (Discussion off the record.)

22 JUDGE SCHWARZBART: Back on the record.

23 Please continue, Mr. Edelman.

24 Gentlemen, do you know have all of the
25 papers to which you were referring in connection

1 with the witness' testimony that were available to
2 you yesterday?

3 MR. PEARL: Yes, your Honor, we now have
4 them in front of us.

5 JUDGE SCHWARZBART: Okay.

6 Can we proceed, Mr. Edelman?

7 THE WITNESS: Your Honor, Mr. Pearl
8 remarks about the document.

9 I want you to know that I was handed --

10 JUDGE SCHWARZBART: Mr. Schifano, please
11 do not volunteer statements.

12 You're here to answer questions.

13 THE WITNESS: Well, a statement was made
14 in regard to the documents that --

15 JUDGE SCHWARZBART: Well, you're not
16 appearing as counsel.

17 I'm going to ask you that you simply
18 be responsive to questions put to you.

19 Mr. Edelman.

20 MR. EDELMAN: Yes, your Honor.

21 BY MR. EDELMAN:

22 Q Mr. Schifano, was there any discussion in
23 connection with Section 16 of the union's proposals --

24 A Yes.

25 Q -- which is vacations; is that right?

1 A Yes.

2 JUDGE SCHWARZBART: I think we were up to
3 15.

4 MR. EDELMAN: I had thought he had
5 already answered 15.

6 THE WITNESS: Well, I did.

7 JUDGE SCHWARZBART: Well, let's take
8 that over again.

9 Apparently there's --

10 MR. EDELMAN: All right.

11 BY MR. EDELMAN:

12 Q In connection with the Section 15 of the union's
13 proposals, nondiscrimination, was there any discussion
14 as to that?

15 A No, no discussion.

16 Sy read the section and okayed every paragraph.

17 Q All right.

18 Was there any discussion in connection with
19 Section 16, vacations, of the union's proposals?

20 A Yes.

21 There was a lot of discussion about that.

22 Q And -- all right.

23 Can you tell us what was discussed?

24 A Well, Sy indicated that Paragraph A, B, C and
25 F of that section would be acceptable, but it would --

1 first of all, he indicated that he didn't wish to
2 join our industry-wide vacation fund, he'd like to keep
3 his own -- pay the vacation to the men directly.

4 Therefore, we left open E, Paragraph E-1, 2, 3
5 and 4.

6 Q Now, what is the union's vacation fund?

7 A Well, it's a -- it's a multi-employer fund.
8 It's like a -- it's a pool fund where the employer
9 contributes a certain amount and benefits are paid to
10 the men through the welfare fund -- through the
11 fund office.

12 Q All right.

13 A I explained -- I remember I explained to Sy
14 that it would be very beneficial for the men to --
15 for him to join this fund, because he had men that
16 were in the industry for a long time and they would
17 get the benefits of it instead of him paying their own
18 vacation, you know, where they would only get whatever
19 length they have with the company, according to the
20 benefit schedule.

21 Q All right.

22 Now, was there any -- was there any discussion
23 in connection with Section 17, of the union's
24 proposals, bulletin boards?

25 A 17?

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1 Q Yes.

2 A It's bulletin boards.

3 No.

4 Sy read it and he okayed it.

5 Q And how about Section 18, safety and health?

6 A There was some discussion about the union's
7 Proposal F on it. But at the end of the discussion
8 Sy agreed to the whole section, Section 18.

9 Q All right.

10 What was the discussion in connection with
11 Proposal F?

12 A I believe it's the OSHA.

13 Yes, it's the -- we included the -- that the
14 company agrees to abide by the OSHA rules.

15 At the beginning Sy didn't want to agree to
16 them, then he agree to that particular paragraph.

17 Q Now, was there any discussion in connection
18 with Section 19 of the union's proposals, the piece,
19 bonus and contract work prohibited?

20 A I remember Jerry asking me why they couldn't
21 give any work to pieceworker or bonus work to their
22 own men.

23 I explained to him that this is -- the union
24 requests that everybody should be paid by the hourly
25 rates.

1 Jerry couldn't understand why we would request
2 such a thing.

3 At the end they okayed Section 19.

4 Q How about Section 20, subletting of work,
5 any discussion on that?

6 A Yes.

7 For some reason Sy didn't like the last words
8 that -- the last four words of the first Paragraph A.
9 Covered by this agreement was not -- he wanted his
10 lawyer to look at that.

11 He thought that that would bind him in some
12 other way.

13 JUDGE SCHWARZBART: Which words were
14 those?

15 THE WITNESS: "Covered by this agreement."

16 I took a note of it.

17 He wanted this, your Honor, to be stricken
18 from the -- I couldn't understand his reason why.

19 And we left it open.

20 BY MR. EDELMAN:

21 Q Did he set forth any reasons why?

22 A He did, but I don't remember -- it didn't make
23 sense to me, at that time, you know, what he was
24 raising. I couldn't agree or disagree with him on it.

25 Q All right.

1 Any other conversation or any other discussion
2 in connection with Section 20?

3 A Well, like I said, he was willing to agree to
4 "A" without those four words.

5 And B, he wanted -- he disagree with it because
6 he said he might get a job.

7 At that time, the whole industry was on strike.
8 He asked me to strike it out.

9 I said that I don't think that we can do that.

10 Q Who asked you to strike it out?

11 A Sy.

12 Q Any discussion with respect to Section 21,
13 erection and field fabrication?

14 A Yes.

15 They read it.

16 They thought that -- Sy said sometime they go
17 out to take measurement to look at the job to see --
18 or, they send McGovern out sometime.

19 But I told him this would only bind him not
20 to actually engage in -- this contract was not for
21 erection.

22 As you know, there's another local that covers
23 that part of the work that we do, which is erection
24 and field erection.

25 But sometimes our men do go out for something,

1 to take a measurement, to make templets for the shop,
2 to look at a job, how it is.

3 Q Is this what you told Mr. Meisner or is this
4 what you're telling me?

5 A Yes, that's about what I told Mr. Meisner.

6 Q And did Mr. Meisner respond?

7 A No, I don't believe I told Meisner, I told
8 both of them.

9 I think I primarily was talking with Sy.

10 Q I see.

11 MR. PERL: Your Honor --

12 A You said Meisner. I --

13 MR. PEARL: Your Honor, I'd like to have
14 the witness answer the question that's asked of him
15 properly, of course.

16 But the interposition of names is rather
17 leading.

18 JUDGE SCHWARZBART: Well, I think it's
19 fairly established that there were just two people --
20 you know, the witness has testified as to who was
21 present at the time.

22 MR. PEARL: Surely.

23 But the witness' recollections are to his
24 discussions that he had with Mr. Sy Erney.

25 If he's going to intimate others present

1 and what participation they allegedly took, let him
2 so do it.

3 JUDGE SCHWARZBART: Well, is it your
4 testimony that during this conversation, both Mr. Erney
5 and Mr. -- I think this was your testimony -- that both
6 Mr. Erney and Mr. Meisner were present?

7 THE WITNESS: And Mr. Hernandez.

8 JUDGE SCHWARZBART: And Mr. Hernandez?

9 THE WITNESS: Yes.

10 JUDGE SCHWARZBART: And these were the
11 parties who were present?

12 THE WITNESS: Right.

13 JUDGE SCHWARZBART: Was everybody present
14 during the entire meeting?

15 THE WITNESS: Yes.

16 JUDGE SCHWARZBART: Does that meet your
17 approval?

18 MR. EDELMAN: I'll rephrase the question.
19 BY MR. EDELMAN:

20 Q Did either Mr. Erney or Mr. Meisner respond?

21 A Yes.

22 They -- actually they started the conversation.
23 They asked me what did this mean, this provision means.

24 Does this provision mean they can't go out
25 anymore or they can't send McGovern out anymore?

1 I told them that's not so, that they can still
2 go out as long as they don't engage in any erections.

3 Q All right.

4 Was there any further discussion on Section 21?

5 A No.

6 We finally agreed -- finally Sy agreed to it
7 and we went to the next page.

8 Q All right.

9 Any discussion on Section 22, which are paydays?

10 A Paydays, Sy read it and he agree to it.

11 Q All right.

12 And how about --

13 A We had a -- we had a discussion on this about
14 the timecards.

15 Q All right.

16 What was the discussion?

17 A Sy was asking, he says, "Why do we have to
18 have cards? Why do we have to buy a clock?"

19 I told him that it was even beneficial to the
20 company to have proper records.

21 Certainly it wasn't something that was that
22 expensive or anything.

23 The reason we asked for it was because of the
24 funds and the -- we must know what -- you know, how
25 much work is done in the shop. We have to have records

1 for it.

2 He finally agree to it.

3 Q Now, with respect to Section 23, the saving
4 clause, was that discussed?

5 A He read it and he agreed.

6 Q Now, with respect to Section 24, wage rates
7 and classifications, was there any discussion on that?

8 A Yes, we had discussion on this.

9 Q All right.

10 Can you tell me the discussion which took place?

11 A One of the problems with this was that the --
12 one of these paragraphs, "E" -- I mean "D", the
13 second -- the second paragraph of "D" says that there
14 must be one foreman on every shop, at least one foreman.

15 Sy was concerned about this insofar that he
16 was not-- that he was going to have Jerry being the
17 foreman, act as a foreman.

18 We left that clause open.

19 Q All right.

20 Any other discussion in connection with the
21 section?

22 A No.

23 Jerry read it. We agreed that the company
24 didn't have any labor and was not planning to employ
25 any, so we struck that classification altogether.

1 Q Which classification?

2 A The laborers' classification.

3 Q All right.

4 Did you --

5 A Because he wanted his men -- Sy explained to
6 me that it was a small shop and he wanted his men to
7 be able to do everything.

8 You know, our shop helpers are not allowed to
9 use tools, they're only for handling materials and
10 loading and unloading and things of that sort, but
11 they're not allowed to use tools.

12 But in Sy's shop, he wanted everybody to be
13 able to do whatever is there to do -- punch and
14 use tools.

15 Q So it was agreed --

16 A So he asked --

17 Q Go ahead.

18 A -- so he asked not to -- that this classification
19 didn't apply to him.

20 Q Which classification?

21 A The laborer classification.

22 Q And was there any agreement in connection with
23 that?

24 A Yes.

25 We agreed to eliminate it.

1 Q Were there any other parts of Section 24 that
2 were discussed?

3 A We left open E, G and H.

4 The company wanted time to read it.

5 Q All right.

6 Did you --

7 A And I -- in regard to the foreman, I told him
8 that possibly Jerry could be classified as a foreman
9 but, you know, he will be replaced by a union man,
10 whenever he will leave the place, get a different
11 position in the company, he will be replaced by a
12 union member.

13 Q Did the company representatives respond to
14 this statement at all?

15 A Well, it was acceptable to them, the idea was
16 acceptable to them.

17 Q Was Section 25, wash up and rest periods,
18 discussed at all?

19 A Yes -- it wasn't discussed.

20 We discussed the adding of another break.

21 Sy told me that the guys were taking it anyway
22 right now.

23 Q Well, what break was this?

24 A Well, the afternoon break.

25 Q Well, what was the discussion?

1 What was your position and what was the
2 company's position?

3 A Well, my position was that we wanted two rest
4 periods, one of ten minutes each time plus 15 minutes
5 if there was any overtime.

6 Sy agreed to it.

7 His reason, he said to me, "They take a coffee
8 break anyway. They go for coffee whenever they want."

9 So he had no objection to it.

10 Q Any other sections discussed at this --

11 A No.

12 Q -- particular meeting?

13 A No.

14 At this time we called the meeting off.

15 Q All right.

16 About how long was the -- was this meeting,
17 in time?

18 A It went until 3:30.

19 Q And it started about what time?

20 A About 10:30.

21 Q Were there any preparations made at this time
22 for the holding of a subsequent meeting?

23 A Well --

24 JUDGE SCHWARZBART: Excuse me.

25 With regard to the time period, was there a

1 recess of any kind from 10:30 to 3:30?

2 THE WITNESS: Yes, we had coffee and pies
3 or something.

4 JUDGE SCHWARZBART: Did you actually
5 leave?

6 Is it your testimony that you actually
7 left the meeting room?

8 THE WITNESS: No, we stayed.

9 We were working on a drawing table, you
10 know. So we stayed where we were.

11 Actually me and Sy were sitting and
12 Jerry and Frankie, were, like, behind us. Jerry was
13 sitting on a chair on the side of the drawing table.
14 Mr. Hernandez was walking about.

15 BY MR. EDELMAN:

16 Q Was there any discussion --

17 A Yes.

18 I told them that I was pleased with the
19 progress that we had made. I didn't even anticipate it.

20 I asked for another meeting as soon as possible.

21 Sy said, that, Well, he'd have to see a lawyer
22 in regard to all of the clauses that he didn't -- that
23 we left open because of he couldn't understand or he
24 wanted clarification on it.

25 He asked me to call him again about a meeting.

1 Q And was -- did you call him?

2 A Yes.

3 We set up a meeting.

4 Q A meeting was set up?

5 A Yes.

6 Q And when was the meeting scheduled for?

7 A I believe it was for the next week.

8 I'll have to look at the date.

9 JUDGE SCHWARZBART: Let the record show
10 that the witness is consulting a red-covered book
11 which I believe has been identified as a calendar?

12 THE WITNESS: Yes.

13 JUDGE SCHWARZBART: A calandar of your
14 appointments; is that correct?

15 THE WITNESS: Yes, sir.

16 JUDGE SCHWARZBART: Okay.

17 THE WITNESS: We set a meeting for the
18 29th here.

19 JUDGE SCHWARZBART: The 29th of what?

20 THE WITNESS: Of September.

21 JUDGE SCHWARZBART: 1975?

22 THE WITNESS: Right.

23 BY MR. EDELMAN:

24 Q Did the meeting take place or go off as
25 scheduled?

1 A No.

2 It was called off by the company, because --
3 I called Sy and he said to me -- I believe he called
4 the office to inform me that the meeting could not
5 take place.

6 I called him back.

7 He said that his lawyer had some problem or --
8 I don't recall what he said exactly, but he called
9 the meeting off.

10 Q And was any --

11 A And we put it up for the following week, I
12 believe, for the sixth.

13 Q Are you consulting your diary on that?

14 A Yes.

15 We put it up for the sixth of October.

16 Q It was rescheduled for the sixth of October?

17 A Right.

18 Q And did the meeting take place on the sixth
19 of October?

20 A Yes.

21 Q At about what time did the meeting take place?

22 A About 10:30, 11 o'clock in the morning.

23 Q And who was present at the meeting for the
24 union?

25 A Well, it was me and Mr. Hernandez.

1 Q And for the c y?

2 A Sy and Jerry.

3 Q All right.

4 Can you describe what took place at this
5 meeting?

6 A Yes.

7 At this -- oh, there was someone else present,
8 too.

9 Q Who?

10 A Somebody that was introduced to me.

11 I don't remember his first name. I think it
12 was Stanberg.

13 Q Stanberg?

14 A Right.

15 Q I see.

16 Where did the meeting take place?

17 A This time we had the meeting in an office
18 that's about 20 feet away from where we had the other
19 meeting.

20 Q A different office?

21 A Right.

22 It's across the hall.

23 JUDGE SCHWARZBART: Excuse me.

24 Mr. Stanberg -- who is Mr. Stanberg
25 connected with?

1 THE WITNESS: Mr. Stanberg described
2 himself as being the owner of the place, as far as
3 I can recollect, and he was renting -- he told me
4 about the difficulty that he was trying to help these
5 people and wasn't even charging that much rent.

6 JUDGE SCHWARZBART: I'm sorry, the owner
7 of what place?

8 THE WITNESS: Of the place where the
9 company is.

10 JUDGE SCHWARZBART: The landlord?

11 THE WITNESS: The actual building, yes.

12 BY MR. EDELMAN:

13 Q He was the landlord?

14 A That was my impression.

15 You see, I don't know if he was subrenting the
16 place or what.

17 My impression was that he was the original --
18 that he was the owner, the guy who rented the place
19 to Jerry, to Sy.

20 Q In any event, this was in an office?

21 A Right.

22 Q And it was not the office that you first had
23 your original --

24 A No.

25 Q -- session in?

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1 A Right.

2 It was in the next office.

3 Q Was Mr. Stanberg --

4 A It was at a table, a desk.

5 Q Mr. Stanberg, was he there during the entire
6 negotiation?

7 A No.

8 He stayed for about an hour or an hour and a
9 half, and then he left.

10 Q Did he take part in these negotiations?

11 A No.

12 Insofar as -- I remember that he asked me if
13 I was in the District Counsel.

14 I told him I didn't know because I was not
15 involved in it. Just general questions, nothing to
16 do with the contract.

17 Q All right.

18 Can you describe what took place in connection
19 with this session?

20 A Yes.

21 I asked Jerry whether he had seen his lawyer
22 and if he was preparing to go over the rest of the
23 stuff that we didn't agree to.

24 Sy, before we started negotiation, was anxious
25 to know what the economic package was going to be.

1 So I said, "Sy, let's get rid of all of the
2 little things, the non-economics, and then we'll
3 see.

4 "I need some information"

5 I told him that I need the information on
6 wages, what kind of wages that he was paying and
7 other information.

8 Oh, and the classification, what were the --
9 what, to the opinion of the company, would be the
10 various employee classification.

11 Q All right.

12 A He gave me that information.

13 I told him that if we can clear up most of
14 the stuff, I'll be able to give him some kind of
15 package on the funds and the wages.

16 Q All right.

17 What took place after that?

18 A Well, we started again from the beginning.

19 I had a list. I had these notes. I knew
20 exactly which were the disagreements and the agreements.

21 We started all over again.

22 Q All right.

23 A First we went through it quick because what
24 he had done, he said he had -- he said he had his
25 lawyer either at his house or at the lawyer's house;

1 I don't know.

2 He said they were watching some kind of
3 sporting event. He said it was very hard for him,
4 even with the lawyer there, to understand.

5 I believe it was the World Series or the
6 elimination; I don't remember.

7 Either from him or from his lawyer, he cut
8 the pieces of the union proposals.

9 Q That would be General Counsel's Exhibit 10-C?

10 A 10-B.

11 Q Yes, 10-B, rather.

12 Q And as we were going through it, he pasted it
13 with a tape into the copy of the contract that he had.

14 So we went through it one time fast. I took
15 notes of whatever we -- of whatever he agreed and
16 whatever.

17 And he passed it --

18 Q Well, tell it just like it took place.

19 A Okay.

20 After we did this, then we started again.

21 He had his copy. He didn't use this anymore
22 (Indicating).

23 Q He didn't use General Counsel's Exhibit what?

24 A No, because he had pieces cut off from here.

25 Q He did not use General Counsel's Exhibit 10-B, is

1 that what you're saying?

2 A Right.

3 Q All right.

4 A Part of it because part of it was already in
5 10-A.

6 Q In other words, he had pasted or --

7 A Right.

8 Q -- stapled --

9 A No.

10 He had some paste and he put it in here.

11 JUDGE SCHWARZBART: And they were pasted
12 to the 10-A?

13 THE WITNESS: To the page, yes.

14 JUDGE SCHWARZBART: To the pages of 10-A?

15 THE WITNESS: Right.

16 MR. EDELMAN: All right.

17 BY MR. EDELMAN:

18 Q Tell us exactly what took place now, section
19 by section.

20 A Okay.

21 The company agreed to the preamble.

22 Q Any discussion on that?

23 A No.

24 I think Sy, he kind of agreed at the first
25 meeting but he said he wanted his lawyer to look at it.

1 Q Go ahead.

2 A We had a discussion on Section 6.

3 Q What was the discussion on Section 6?

4 A We had two discussions on Section 6.

5 The first time we went through it, I asked him
6 why couldn't we get an agreement -- not Section 6,
7 Section 5, which was only a bookkeeping problem.

8 If the men wish to have the company take the
9 dues off -- he thought it was a big deal for the
10 company to do that because they didn't have -- because
11 they didn't have a secretary, they didn't have a
12 typewriters, he said.

13 He thought it was a big deal.

14 We finally -- I finally got him to agree to it.

15 Q All right.

16 A Then we had discussion on Section 6.

17 Q Section 6 --

18 A Right.

19 Q -- concerning hours of work?

20 A Right.

21 The company proposed that they would take the
22 37-1/2 hours.

23 He said that my men come here a half hour late
24 in the morning, anyway, he said.

25 Nobody is checking when they come in. So he

1 wanted to take a 37-1/2 hours.

2 I told him that we were opposed to that because
3 the industry was working on a 40-hour basis and we
4 wanted the company to work the regular 40 hours.

5 We couldn't get an agreement on that.

6 Q All right.

7 A The company came out with a counter proposal
8 that they wanted 37-1/2 hours now.

9 Then we had a discussion on Section 10.

10 Q Section 10 relates to grievance and arbitrations.
11 What was your discussion on Section 10?

12 A Section 10 --

13 MR. PEARL: Pardon me.

14 I missed the last -- I missed the response
15 to Section 6.

16 Could that be read back for me, please?

17 JUDGE SCHWARZBART: Please read the
18 answer.

19 (Record read.)

20 MR. PEARL: Thank you.

21 BY MR. EDELMAN:

22 Q What was your discussion on Section 10,
23 Mr. Schifano?

24 A Section 10 had to do with the shop steward.
25 The company -- Sy said that he read the section

1 and he agreed to it, but he wanted to know about the
2 shop steward.

3 He was very concerned about who was going to be
4 the shop steward.

5 I told him again that it was impossible for me
6 to give him an answer, that after we had a contract
7 then he'll find out who was going to be the shop
8 steward, if there was going to be anyone.

9 And so we had to leave that whole thing open
10 because of the company -- was really pushing for this.

11 The first time we went through it fast, I had
12 the company to agree on the part of nine that was
13 agreed on.

14 I -- Section 9, the part that the company -- the
15 company thought that --

16 JUDGE SCHWARZBART: Nine is reporting pay?

17 THE WITNESS: Yes.

18 A. (Continuing)

19 My notes says here -- I don't remember what
20 we talked about here. I don't remember the conversation.

21 It says "A", okay, and "C" is still open.

22 I don't remember what we talked about it.

23 Q Is this with respect to Section 9?

24 A Yes.

25 Q This had been agreed to initially?

1 A No.

2 This was -- part of it was agreed, only one
3 paragraph, Section D was agreed, and the only section
4 was not.

5 The other paragraph was not agreed on.

6 Q Well, was there any discussion in connection
7 with Section 9 at this meeting that you can recall?

8 A No, I don't recall any.

9 I'm trying to remember by looking here, but
10 I don't recall what was the argument about this.

11 Q Now, what was the next section, if any,
12 discussed?

13 A Well, we discussed Section 16.

14 Q Section 16?

15 A Yes.

16 That was the vacation.

17 The company at this time told me definitely
18 that they were not going to have any part of our
19 funds.

20 They told me that they were just going to
21 stick with the schedule of benefits and they would
22 handle their own vacation funds, vacation payments.

23 The only thing the company on this section in
24 the previous meeting had agreed to a certain paragraph,
25 and this time, I believe after he talked with his lawyer

1 or something, he disagreed to certain things that he
2 had already agree to.

3 We had a discussion on it, and I told him,
4 you know, once he agrees to something, he can't come
5 up at the next meeting and say, you know, that he
6 disagrees.

7 I said that if there is something that you
8 don't understand, then don't agree to it.

9 The company -- Sy said that he would agree to
10 A, C and F, but he wanted D, B and E, hold it.

11 They already had agreed to that. They didn't
12 agree to E, but they already had agreed to D and B.

13 Q Any other discussion that took place?

14 A Section 20, again we had a problem with the
15 subletting.

16 I told him that I spoke with my lawyer, there
17 was nothing wrong with that, covered by this agreement,
18 there was nothing detrimental to the company by adding
19 those words.

20 The company still took the position that they
21 wanted those four words off the agreement, in Section B,
22 that is, off the clause.

23 So he said that he's just starting in business,
24 if he gets a job, he's not going to look who gave it
25 to him. He don't want to be bound by this paragraph.

1 Q Was there any further discussion at this
2 meeting?

3 A Yes.

4 We had a discussion on wages.

5 Q Section 24?

6 A 24.

7 Q All right.

8 Can you describe the discussion that took
9 place in connection with Section 24?

10 A Right.

11 At this point I asked him to give me those
12 information that I had asked for before.

13 The company -- I had noted the information
14 that the company gave me, you know, on the back of --

15 Q Of General Counsel's Exhibit --

16 A Of 10-C.

17 Q 10-C represents -- on the backside, there's an
18 inked portion?

19 A Yes.

20 Q And that represents what?

21 A The information that the company gave me.

22 Q All right.

23 Can you read from that exhibit what --

24 JUDGE SCHWARZBART: In whose handwriting
25 is that?

1 THE WITNESS: Mine, your Honor.

2 MR. PEARL: On the back of 10-C?

3 MR. EDELMAN: Yes.

4 MR. PEARL: We don't have it.

5 MR. EDELMAN: I just didn't --

6 JUDGE SCHWARZBART: Give it to counsel
7 before the witness testifies about it.

8 MR. EDELMAN: It's very short.

9 (Handing.)

10 BY MR. EDELMAN:

11 Q Would you read the notes?

12 A Yes.

13 It says, in abbreviations, hour, Tommy, 625.

14 Q Tommy, I assume that refers to McGovern?

15 A Right.

16 They classify him as a finisher.

17 Danny, 550.

18 Q Daniel Coli, is that?

19 A Right.

20 They classify him as a mechanic.

21 There's, also, another -- it says 180. I think
22 this is the difference between a finisher pay that we
23 have in an industry and the difference between what he
24 was paying to them.

25 John, four dollars.

1 Q The John refers to who?

2 A John Frick.

3 Apprentice A then there's a notation of three
4 years. We had a discussion on the length of the
5 contract. The company wanted to have a three-year
6 contract.

7 I asked him what was their goal?

8 And Sy said that we would like to have a
9 three-year contract.

10 This way I could come up with a package that
11 comprised the three years.

12 MR. PEARL: Did you say three or two
13 years?

14 THE WITNESS: Three years.

15 MR. PEARL: Three all the time?

16 THE WITNESS: Yes.

17 JUDGE SCHWARZBART: Just so I fully
18 understand your notes, and let's look at it together --

19 THE WITNESS: Yes.

20 JUDGE SCHWARZBART: -- on the first line,
21 next to Tommy, you wrote 625.

22 THE WITNESS: Yes.

23 JUDGE SCHWARZBART: What does that
24 represent?

25 THE WITNESS: That's what the company told

1 me that they ewere paying him.

2 JUDGE SCHWARZBART: And then there is a
3 hyphen next to that.

4 THE WITNESS: Finisher.

5 JUDGE SCHWARZBART: That stands for
6 finisher?

7 THE WITNESS: Right.

8 JUDGE SCHWARZBART: And then there's 180.

9 THE WITNESS: Right.

10 JUDGE SCHWARZBART: What does that mean?

11 THE WITNESS: That's the difference
12 between the finisher rate of pay now in my contract
13 and what he was paying them.

14 It's 805. And that would be the
15 difference.

16 JUDGE SCHWARZBART: I see.

17 So in the contract --

18 THE WITNESS: We were asking for 805. I
19 was planning to ask for 805, and that would be the
20 difference.

21 JUDGE SCHWARZBART: I see.

22 THE WITNESS: Because we had a discussion
23 on this. As I referred to in my testimony, I --

24 JUDGE SCHWARZBART: Okay.

25 Just so we can go over the notes.

1 Danny, it ~~says~~ 550.

2 THE WITNESS: Right.

3 JUDGE SCHWARZBART: That's five dollars
4 and fifty cents?

5 THE WITNESS: Right.

6 JUDGE SCHWARZBART: And then there's a
7 dash and Mech?

8 THE WITNESS: Mechanic.

9 JUDGE SCHWARZBART: Next to that is a
10 figure?

11 THE WITNESS: Yes.

12 JUDGE SCHWARZBART: What's that figure?

13 THE WITNESS: 185.

14 JUDGE SCHWARZBART: That's the difference
15 again?

16 THE WITNESS: The difference between the
17 rate of pay that the mechanic gets now and the
18 difference between -- and whatever the company said
19 that they were paying at the time.

20 JUDGE SCHWARZBART: I see.

21 And is it your testimony that there's a
22 like explanation for John who has four dollars an hour-
23 apprentice and 160 next to his name?

24 THE WITNESS: Right, that's the same
25 thing.

1 JUDGE SCHWARZBART: I see.

2 Thank you very much.

3 Please continue, Mr. Edelman.

4 MR. EDELMAN: All right.

5 BY MR. EDELMAN:

6 Q And so originally you started of the discussion,
7 you testified, by asking what the classifications and
8 present wages were for these employees.

9 A Right.

10 Q The company gave them to you.

11 A Yes.

12 Q You wrote them down.

13 A Yes.

14 Q Now, what took place next?

15 A We, also, had an extensive discussion about
16 John Frick because the company wasn't sure whether to
17 classify him as a mechanic or as an apprentice.

18 Sy said that he's doing this, he's doing a
19 little welding and burning.

20 He says that he can't be a mechanic.

21 So we didn't agree to it but we started to
22 classify him as an apprentice to just start discussing
23 the thing.

24 After he gave me his figure, I told him that we
25 wanted to immediately increase up to date, up to our

1 schedule here in Section 24.

2 The company agreed to the finisher but
3 wouldn't agree to the mechanic.

4 Q The finisher is who?

5 A Tommy.

6 Q McGovern.

7 A Right.

8 Q All right.

9 Was there an agreement reached as to McGovern's
10 rate of pay?

11 A Right.

12 Q What was that rate that was agree to?

13 A 805.

14 Q They were going to pay him 805?

15 A Yes.

16 Q And was there an agreement --

17 A They won't agree to the mechanic rate.

18 And, also, they won't agree to John, especially
19 because of the question they had in his mind according
20 to whether he was an apprentice or a mechanic.

21 Q All right.

22 A But I told him that if we agree to classify him
23 as an apprentice, he would have to give him a dollar
24 sixty increase. That's the starting rate for an
25 apprentice.

1 We, also, have a schedule on the apprentice.

2 We had a problem -- I had a problem.

3 I had asked him how long John was working --

4 John Frick was working in there.

5 The company didn't respond to that.

6 Q All right.

7 A I, also -- we got out of the way the question
8 of the foreman.

9 I agreed with them that Jerry will act as a
10 foreman, but he will be replaced by a union man.

11 As I say, we left the mechanic open.

12 That's all I can remember.

13 Q All right.

14 Any other matters discussed at this section?

15 A Section 24.

16 No, I don't remember in this section, we
17 discussed anything else.

18 Q Now, you indicated at one point in your
19 testimony that the term of the contract was discussed.

20 A Yes.

21 Q Where did that discussion take place, in
22 connection with which section?

23 A When we were talking about Section 24.

24 Q Okay.

25 A Because the company, Sy, was anxious to know,

1 you know, exactly how much it was going to cost him
2 to --

3 Q Was there any agreement in connection with the
4 term of the contract?

5 A No.

6 But I indicated that we were willing to go to
7 three years.

8 There was no firm agreement on it.

9 Q Okay.

10 Were there any other sections or parts of the
11 contract that were discussed?

12 A No.

13 At this point I -- we had a discussion on the
14 fund.

15 Q You talked about -- you mentioned the funds.
16 Can you enlighten us what the funds are?

17 A We have seven funds in our contract.

18 Each one of them is a contribution by the
19 employer.

20 Sy asked --

21 Q Well, these funds -- illustrate what are they,
22 what kind of funds that you have?

23 A Well, one is a pension fund.

24 One is the welfare fund.

25 One is the vacation fund.

1 One is the apprenticeship and training fund.

2 Q Right.

3 A One is the annuity fund, and another one is
4 the sick leave fund.

5 I hope I didn't miss any one.

6 Q All right.

7 A I know we have seven.

8 Q Now, Mr. Schifano, was there any discussion in
9 connection with these funds?

10 A Yes.

11 We -- first of all, Sy added in a piece of
12 paper how much the percentage will be.

13 I think he came up with a figure of about 35,
14 with the increases, with the increases in the
15 stipulation.

16 Q 35 what?

17 A 35%.

18 Q Would be as an increase over what?

19 A No, no.

20 The total percentage contribution on the wages
21 will be about 35%.

22 Q Okay.

23 A He made a sketch. He wrote it down, each funds.

24 Q All right.

25 A And I told him that I was going to go back to

1 the office and work out a prorated thing for the
2 three years.

3 If we agree on the three years, to work out
4 some kind of a prorated sys em where we won't have to
5 pay or join every fund right ay.

6 This was in response to his demand that he had
7 some jobs and, you know, he would never agree to pay
8 right away because he couldn't do it, he would be
9 losing money.

10 Q All right.

11 A And that's how we left the meeting.

12 I was supposed to make a package and go back
13 to him.

14 Q When you say a "package," was this in
15 connection with the funds?

16 A Yes.

17 Q I take it there were no more sections of the
18 contract that were discussed at this session?

19 A No.

20 Q Okay.

21 Was there a new date agreed upon at this
22 session?

23 A No.

24 Q Was there any discussion in connection with a
25 new date?

1 A Yes.

2 We left it that I would call as soon as I was
3 ready with the package, I would call.

4 Q All right.

5 Did you make a phone call to the company in
6 connection with further negotiations?

7 A Yes.

8 Q And on or about what day did you call him?

9 A I don't remember the date.

10 I actually went down there directly, I went,
11 because Brooklyn is part of my territory, too, when
12 I go for the apprenticeship program.

13 So I had the figures with me, and I passed by.

14 At that time, I found McGovern.

15 Q When did you -- when did you pass by, on about
16 what date?

17 A During the day. I can't remember the hours.
18 It was just in --

19 Q No.

20 What day?

21 A I don't know the day.

22 It was during the week sometime.

23 Q During the same week that the first negotiation
24 was --

25 A It was shortly after the meeting, maybe a couple

1 of days after the meeting.

2 Q After the October 6th meeting?

3 A Right.

4 Q All right.

5 You were down at the plant?

6 A Right.

7 Q All right.

8 What happened at that time?

9 A Well, I asked -- I had a conversation with
10 McGovern.

11 He told me that the two employers were not in
12 and that they had laid off Coli.

13 So I tried to get in touch with them by phone.

14 I got Jerry on the phone a couple of times.

15 Q That same day?

16 A Right, either the same day or the day after.

17 I don't remember.

18 Q So it would be around the ninth or tenth of
19 October in any event?

20 A Right.

21 Q And you managed to get Erney on the phone?

22 A Yes; a couple of times.

23 He said that Sy is not here, you know, that
24 he's the one who -- okay.

25 So I have a date when -- I noted this date

1 because I know it was important.

2 It was like a break in -- the 14th.

3 JUDGE SCHWARZBART: Of what?

4 THE WITNESS: Of October.

5 BY MR. EDELMAN:

6 Q On the 14th of October?

7 A Right.

8 Q What took place on the 14th of October?

9 A I called Sy.

10 I said to him, "I'm ready with the package.
11 Let's set a date here."

12 He said to me, "I don't believe that you
13 represent the men anymore."

14 So I said, "Sy, what's the matter with you?
15 How can you say that now after we went through all
16 that?"

17 He says, "I retained counsel and that's all I'm
18 going to tell you, that I don't believe you represent
19 the men anymore."

20 Q Any further conversation?

21 A No, no more.

22 I called the lawyer.

23 Q You had no more conversation?

24 A No, no more.

25 Q What, if any, action did you take following this

1 conversation?

2 A Well, I called the lawyers.

3 I believe the same day we filed charges or
4 the day after; I don't remember.

5 Q Mr. Schifano, earlier in your testimony I had
6 asked you whether you had any conversation with
7 McGovern in connection with obtaining an authorization
8 card from him.

9 A Yes.

10 Q And that question was withdrawn

11 I ask you again, did you have any conversation
12 with Mr. McGovern in connection with obtaining an
13 authorization card?

14 A Yes.

15 Q And on or about when did the conversation take
16 place, if you recall?

17 A It took place the same day that I signed the
18 cards with the other two.

19 Q All right.

20 A But it took place at night.

21 Q Where?

22 A Where?

23 Q Yes.

24 A In a bar near where -- we both live in the same
25 neighborhood.

1 Q All right.

2 Do you know the --

3 A Actually I even know the bar because I always --
4 because sometimes I see him there.

5 Q What's the name of the bar?

6 A Gordon Gay.

7 It's a Scottish Bar.

8 Q All right.

9 Did you have any conversation with McGovern
10 in this bar?

11 A Yes.

12 Q Can you tell me the conversation that you had?

13 A Yes.

14 JUDGE SCHWARZBART: What's the date of
15 this conversation?

16 THE WITNESS: The same night of the same
17 day that I signed the other two.

18 I believe it's on the record already.

19 It's September 15th.

20 I called him on the phone. I told him
21 that I wanted to meet him.

22 He came down to meet me over there.

23 MR. EDELMAN: All right.

24 BY MR. EDELMAN:

25 Q And can you tell me the conversation that you had

1 with Mr. McGovern?

2 A Yes.

3 I asked him to sign the card.

4 He asked me, "Why?"

5 He says that, "I'm a member of Local 455 for
6 over 20 years. Why do I have to sign the card?"

7 So I explained to him that it was necessary for
8 us to have everybody's card, if it's possible.

9 He showed me a check that he had

10 He says, "Look," he says, "When the company
11 started this -- when Sy and Jerry stopped with GLG and
12 we started this," he says, "You know, they treated me
13 like -- they're treating me good."

14 He showed me a check of \$295. That was his
15 weekly pay. I believe it's 295. I'm not -- \$295.

16 He said, "Why should I get involved?" He says.

17 He says, "I do know what I want there. I
18 don't -- he says, "I'm with you. I'm with the local.
19 If there's any strike or anything, I won't cross no
20 picket lines."

21 He didn't see the necessity for signing the card.

22 I see that I couldn't convince him to sign it.

23 That's it.

24 MR. EDELMAN: All right.

25 I have no further questions of the witness.

* * *

1 (Daniel Coli resumes the witness stand.)

2 JUDGE SCHWARZBART: Mr. Coli, let me
3 remind you, sir, that you are still under oath.

4 THE WITNESS: Yes, sir.

5 JUDGE SCHWARZBART: Please be seated.

6 THE WITNESS: Yes, sir.

7 JUDGE SCHWARZBART: Mr. Pearl.

8 CROSS-EXAMINATION

- Coli

9 BY MR. PEARL:

10 Q Mr. Coli, it's Daniel?

11 A Yes.

12 Q Where were you employed before working at
13 Emco Steel?

14 A Brightman Iron Works.

15 Q Is that in Brooklyn?

16 A No.

17 Q Where is that firm located?

18 A In Springfield Gardens.

19 Q What work did you do there?

20 A The same, welding, mechanic.

21 Q What was your rate of pay?

22 MR. EDELMAN: I'm going to object to that.

23 A 670.

24 JUDGE SCHWARZBART: Wait a second.

25 Don't answer.

* * *

* * *

1 THE WITNESS: Per hour?

2 JUDGE SCHWARZBART: That's correct.

3 THE WITNESS: 670,

4 BY MR. PEARL:

5 Q And what would that be on a weekly basis?

6 A 268.

7 Q And you were a member of -- you had testified
8 that you were a member of Local 455 in that shop.

9 Is that correct?

10 A Right.

11 Q For quite a period of time?

12 A Yes.

13 Q Since when?

14 A Since '49, I think.

15 You mean in the union?

16 Q Yes.

17 A Yes, since 1949.

18 Q Since 1949; okay.

19 Now, did you leave -- did you have reason to
20 leave the employ of Brightman Iron Works sometime
21 during the year of 1975?

22 A Yes.

23 We were on strike.

24 Q Brightman was on strike?

25 A Yes.

1 Q Was that strike general in the industry?

2 A Yes.

3 Q It was.

4 When you left there, did you approach Mr. Erney
5 for a position with Emco Steel, for a job?

6 A Did I --

7 Q Did you speak --

8 A Yes.

9 Q -- to Mr. Erney about a job?

10 A Yes.

11 Q You did.

12 What did you ask him and what did he say to
13 you regarding your employment at Emco?

14 A Well, what he told me about -- I didn't --

15 Q What was the arrangement that you agreed on
16 regarding your employment at Emco?

17 What were you to do?

18 A Oh.

19 The same.

20 Q Right.

21 A I mean, I know him for a good many years. He
22 knew, you know, that I could do everything. The same
23 thing, the same type of work.

24 Q All right.

25 And what salary were you to get?

1 A It was 220, I believe. I might be wrong.

2 Q Now --

3 MR. EDELMAN: Is that 220 a week or an hour?

4 THE WITNESS: A week.

5 JUDGE SCHWARZBART: Based on how many hours
6 a week?

7 THE WITNESS: 40-hour week.

8 Well, of course, if you work more, you
9 get overtime. It was a 40-hour week.

10 BY MR. PEARL:

11 Q Now, isn't it a fact that it was understood
12 between yourself and Mr. Erney that you had the right
13 to leave his employ and go back to Brightman when the
14 strike was over?

15 A Yes, I believe so; yes.

16 Q And isn't it a fact that Mr. Erney employed you
17 temporarily so that you would not have to be relegated
18 just to receive unemployment compensation?

19 A Yes.

20 Q And isn't it a fact that if the work wasn't in
21 the shop for you to perform, he would have no choice
22 but to lay you off?

23 MR. EDELMAN: I'll stipulate that an
24 employer has no choice but to lay anyone off if
25 there's no work in the shop.

1 A Yes.

2 BY MR. PEARL:

3 Q That's correct?

4 JUDGE SCHWARZBART: Well, we'll hear the
5 answer.

6 Okay.

7 BY MR. PEARL:

8 Q So, therefore, Mr. Coli, you were not a
9 permanent employee?

10 MR. EDELMAN: Objection.

11 A That's right.

12 MR. EDELMAN: Objection.

13 It calls for a conclusion of the witness.

14 JUDGE SCHWARZBART: Overruled.

15 BY MR. PEARL:

16 Q What's your answer?

17 A Right, I wasn't.

18 JUDGE SCHWARZBART: The witness is free
19 to testify as to the nature of his employment relation-
20 ship.

21 BY MR. PEARL:

22 Q Now, you received the salary of approximately
23 220 a week?

24 A Yes.

25 Q And that was your arrangement with Mr. Erney?

1 A Yes.

2 Q So long as --

3 A It was prearranged, yes.

4 Q For as long as he could keep you in the employ?

5 A Right.

6 Q Because of your situation with Brightman Iron
7 Works?

8 A Right.

9 Q Now, isn't it a fact that you were laid off,
10 or told by Mr. Erney that there was no further work
11 for you on October the third?

12 A Yes.

13 I saw it myself, I mean the job was done.

14 Q And he said he could not keep you on the
15 payroll any longer?

16 MR. EDELMAN: I'm going to object to
17 that.

18 There's been no discriminatory discharge
19 alleged.

20 JUDGE SCHWARZBART: Well, the witness
21 has just testified that he saw that the job that he
22 was working on was ended. So he's not -- so it's not
23 just relevant to the question of whether the witness
24 as discriminatorily laid off, it's just generally as
25 to what his employment status was with the Respondent at

1 the time.

2 I'm going to allow that in.

3 Now, you testified that you were working
4 on a specific job prior to October the third?

5 THE WITNESS: Well, he didn't tell me
6 how much work that he had for me.

7 You know, he said --

8 JUDGE SCHWARZBART: Well, what I'm trying
9 to get at is this:

10 You testified, Mr. Coli, that the work
11 that you were doing was ended?

12 THE WITNESS: It was, yes, it was.

13 JUDGE SCHWARZBART: Could you explain,
14 please, what it was that you were doing, where were
15 you working and what specific work you were referring to?

16 THE WITNESS: Well --

17 JUDGE SCHWARZBART: You know, that you
18 said ended on or about --

19 THE WITNESS: Well, your Honor, the last
20 job that I was working on, the job was completely
21 finished.

22 I mean, there was no steel left. The job
23 was all shipped. There was nothing in the place. I
24 mean --

25 JUDGE SCHWARZBART: Where was the job

162a

1 located?

2 THE WITNESS: I don't remember.

3 JUDGE SCHWARZBART: Well, where were you
4 doing the work?

5 THE WITNESS: Where?

6 JUDGE SCHWARZBART: Yes.

7 THE WITNESS: In the shop.

8 I mean, I'm -- I was just an employee
9 there. I mean, I don't --

10 JUDGE SCHWARZBART: I see.

11 THE WITNESS: -- I don't --

12 JUDGE SCHWARZBART: Well, how then do
13 you know whether the job, the specific job, was
14 ended?

15 THE WITNESS: Well, I know because it
16 was all shipped and there was no steel in the place.

17 I mean, I --

18 JUDGE SCHWARZBART: Had you identified
19 that with a given account, the work that was being
20 done?

21 THE WITNESS: Could you repeat that?

22 JUDGE SCHWARZBART: Yes.

23 Had you identified the work that you
24 were doing as work that was being done for a specific
25 customer?

1 THE WITNESS: Yes, I believe it was a
2 firehouse.

3 I'm not -- I'm not sure of that, though.
4 The job, I mean, I believe it was a -- or
5 a school.

6 I mean, I can't -- I don't recall what
7 job it was, but I know it was complete.

8 JUDGE SCHWARZBART: Okay.

9 THE WITNESS: I mean --

10 JUDGE SCHWARZBART: Mr. Pearl.

11 MR. PEARL: Yes.

12 BY MR. PEARL:

13 Q Isn't it a fact that your working tools that
14 you use in your trade that you left at Brightman Iron
15 Works -- that you left it there?

16 A Yes.

17 Q You expected to return there because you left --
18 to use the tools that you had left there?

19 A Yes.

20 Q You didn't bring any of your tools to Emco,
21 did you?

22 A Well, the only thing which I brought, which I
23 had a spare one, a hammer or a chisel.

24 Q But the rest were all left at Brightman Iron
25 Works?

1 A Yes.

Q Now, yesterday when you were testifying, you stated, in response to a question asked by Mr. Edelman, that -- and I think I'm quoting you correctly -- "I had no alternative but to sign the union card."

A That is true.

Q What did you mean by that?

A Well, I'm -- it would be mighty strange, it would be mighty funny, it would be real phoney if I'm, as a member of Local 455, would not sign a card.

11 I mean, when a union representative of my local
12 comes in and gives me something to sign, I would be
13 a hypocrite if I wouldn't sign, because I'm a member
14 of Local 455.

15 Am I right or am I wrong?

16 Q You answered the questions.

17 JUDGE SCHWARZBART: Well, I don't think
18 that it is your responsibility to ask questions of
19 counsel.

20 THE WITNESS: Well, let's put it this
21 way, your Honor, and cut it short:

22 I, as a member, that's the way I think.

23 I, as a member of Local 455, had only
24 one choice but to sign the thing.

25 BY MR. PEARL:

1 Q And did Mr. Schifano -- he gave you this
2 card, didn't he?

3 A Yes.

4 Q You testified?

5 A Yes.

6 Q Did he ask you if you were permanently employed
7 at Emco, or not?

A I don't recall him asking me that.

I mean, I --

Q Well, answer only what you recall.

1 A I don't recall.

12 JUDGE SCHWARZBART: Off the record.

13 (Discussion off the record.)

14 JUDGE SCHWARZBART: Back on the record.

15 During an off-the-record discussion, with
16 regard to the industry-wide strike brought by Local 455,
17 is it possible, gentlemen, to stipulate that the strike
18 began on or about July first, 1975 and continued until
19 on or about January 9th, 1976, at which time the
20 great bulk of the employees returned to work except for
21 a comparatively few shops where the strike may still be
22 in progress?

MR. ZISKIN: I would have no objection.
I would enter into that stipulation.

2 MR. PEARL: The Respondent would concur.

1 MR. EDELMAN: July first -- yes, I will.

2 JUDGE SCHWARZBART: The stipulation is
3 received, gentlemen.

4 Thank you.

5 Mr. Pearl.

6 MR. PEARL: Thank you, your Honor.

7 BY MR. PEARL:

8 Q I show you General Counsel's Exhibit 5, which
9 you previously seen.

10 (Handing.)

11 A Yes.

12 Q That's your signature on there, Mr. Coli?

13 A Yes.

14 Q There are other written notations on the card.
15 Were they placed there by your hand or by
16 another person?

17 A To tell you the truth, I don't have my glasses
18 with me.

19 I think I said yesterday that -- it doesn't
20 look like my handwriting. It might be. I think
21 yesterday I says I didn't write that, I just signed it.
22 But I'm not sure.

23 Q You didn't put in your address, in any event?

24 A No.

25 Q Now, is it a fair statement to make that the

1 card was given to you by Mr. Schifano and you just
2 signed it for the reasons you previously mentioned?

3 A Yes, I signed it; yes.

4 Q For that reason?

5 A Yes.

6 Q When you left Emco Steel, you had been paid
7 all the wages that were due you?

8 A Yes.

9 Q And you left nothing on the premises that
10 belonged to you?

11 A No.

12 Q Okay.

13 MR. PEARL: I conclude with this witness.

14 JUDGE SCHWARZBART: Mr. Ziskin?

15 MR. ZISKIN: I have no question of the
16 witness.

17 JUDGE SCHWARZBART: Mr. Edelman?

18 MR. EDELMAN: Yes, I have just a few,
19 your Honor.

20 REDIRECT-EXAMINATION

21 BY MR. EDELMAN:

22 Q Mr. Coli, in your years in Local 455, about how
23 may jobs have you worked?

24 A Oh, I'd say ten, offhand, ten shops, let me put
25 it this way.

1 Q Ten shops?

2 A Right, yes.

3 Q Would it be fair to state that it's been
4 common practice to go from one shop to another when
5 you've been laid off from one shop?

6 A You mean me or --

7 Q In the industry in general, employees in the
8 industry.

9 MR. ZISKIN: Objection.

10 MR. PEARL: Objection, your Honor.

11 MR. ZISKIN: This is leading.

12 This is his witness, your Honor.

13 MR. EDELMAN: Your Honor, I submit that
14 although it may be my witness in connection with the
15 authorization card, he's not my witness in connection
16 with this issue.

17 In this issue, I'm cross-examining and
18 can lead.

19 JUDGE SCHWARZBART: Let me hear the
20 question read again, please.

21 (Record read.)

22 MR. ZISKIN: Well, I don't think it was
23 a question, your Honor, it was a statement.

24 MR. EDELMAN: I'll rephrase it.

25 JUDGE SCHWARZBART: Would you please.

1 BY MR. EDELMAN:

2 Q Are layoffs common in the industry?

3 A Yes.

4 Q They are common?

5 A Very common, yes.

6 Q All right.

7 Have you ever been laid off from a job that
8 you've been on?

9 A Yes.

10 Q And when you were laid off from one job, what
11 would you do?

12 MR. ZISKIN: Your Honor, I'm going to
13 object to relevance.

14 We don't have any issue of layoffs in
15 this case.

16 JUDGE SCHWARZBART: Mr. Edelman, I'm at
17 a loss here as to the relevancy.

18 MR. EDELMAN: Well, your Honor, I'm trying
19 to show that people take jobs, so-called permanent
20 jobs in the industry for short periods of time from
21 time to time and that the term "permanent" or
22 "temporary" employee is not necessarily a meaningful
23 term, that employees are employed for short terms in
24 this industry and go from one job to another.

25 JUDGE SCHWARZBART: Well, you see, what

1 I'm more concerned about, to be frank with you,
2 Mr. Edelman, is: What was the relationship at this
3 particular job with Emco?

4 The general practice within the industry
5 could be largely irrelevant.

6 What is material, as far as defining what
7 Mr. Coli's relationship was at this particular
8 location.

9 I think it would probably be more
10 meaningful if you could just explore that.

11 MR. EDELMAN: All right.

12 Very well.

13 BY MR. EDELMAN:

14 Q Mr Coli, if you can, I wish you would
15 restate, as best you can, your conversation with
16 Mr. Erney.

17 I take it he's the individual that hired you?

18 A Erney or Mr. Meisner, Jerry; I don't know.

19 Q You don't recall which one hired you?

20 A Meisner, I think.

21 Q You believe it was Jerry Meisner?

22 A Yes.

23 Q Did you have a conversation with Mr. Jerry
24 Meisner in connection with your employment?

25 A Well, he called my wife. I wasn't home at that

1 time.

2 I went back the next day, and I spoke to
3 Jerry Meisner.

4 He told me that he would hire me at the certain
5 rate of pay, you know.

6 Q It was Meisner that called you up and sought
7 you out rather than --

8 A Yes.

9 MR. ZISKIN: I wish Mr. Edelman would let
10 him finish his testimony rather than interrupt.

11 JUDGE SCHWARZBART: The witness is
12 testifying.

13 Go ahead.

14 A I had done work for him before, because I'm
15 a certified welder and I had done some work for him
16 before.

17 And being that I knew him, you know, for a
18 good many years, I guess he knew what I could do. He
19 needed a mechanic. So he hired me.

20 Q All right.

21 Did you have any conversation with him when
22 you were hired?

23 A On -- well, on the pay, he told me what the
24 scale would be. I agreed.

25 Q And then you went to work?

1 A The following day, I believe I went to work,
2 yes.

3 JUDGE SCHWARZBART: Now, going back --
4 just before we leave that -- around what date was
5 this conversation with Mr. Meisner at which time you
6 were hired by Emco?

7 THE WITNESS: Well, I know I was on strike
8 for two weeks. He called hom.

9 JUDGE SCHWARZBART: Would you say then
10 based upon the stipulation that it was around the
11 middle of July?

12 THE WITNESS: Right, right, around the
13 middle of July.

14 JUDGE SCHWARZBART: The middle of July of
15 1975?

16 THE WITNESS: Right.

17 JUDGE SCHWARZBART: Now, at the time when
18 you spoke to Mr. Meisner, what, if anything, was said
19 about the duration of your employment there?

20 THE WITNESS: I don't believe anything
21 was said, not that I can recall. I don't recall of
22 anything.

23 You mean as far as --

24 JUDGE SCHWARZBART: About how long you'd
25 been there and so on?

1 THE WITNESS: Oh, he didn't say.

2 He didn't say anything.

3 JUDGE SCHWARZBART: Did you say anything?

4 THE WITNESS: Well, I was happy to get
5 a job.

6 JUDGE SCHWARZBART: Was anything said
7 about your going back to some other employer or
8 otherwise?

9 THE WITNESS: Well, I don't recall. It
10 might have been. I mean, I don't recall.

11 I mean, I --

12 JUDGE SCHWARZBART: Well, in response to
13 questions put to you by Mr. Pearl, you testified that
14 you were a temporary employee and that you were going
15 back to Brightman.

16 Do you recall that testimony?

17 THE WITNESS: Well, I --

18 JUDGE SCHWARZBART: Well, Mr. Coli, my
19 question to you now is:

20 What is the basis of that testimony?

21 We're trying to find out, in short, what
22 was said and what were the terms of your employment
23 there and so on.

24 THE WITNESS: Well, he never came right out
25 to me and said that you're going to -- that if the strike

1 ends tomorrow, you're going back.

2 I mean, he never said anything like that
3 to me at the time.

4 But maybe he just took for granted that
5 I would go back.

6 MR. EDELMAN: I'm going to move -- your
7 Honor, I'm --

8 JUDGE SCHWARZBART: All we're asking you
9 is what you've seen and what you've heard.

10 No suppositions, no guesses.

11 As you see me sitting here, this is it,
12 whatever was stated to you.

13 THE WITNESS: I mean, I can't recall all
14 of the words. I think --

15 JUDGE SCHWARZBART: Not what you think,
16 what was said to you.

17 THE WITNESS: I --

18 JUDGE SCHWARZBART: Now, my question to
19 you is this -- and it's quite important:

20 On that occasion, that is, at the time of
21 your hire, or at any other time while you were there
22 prior to October third, 1975 when you testified that
23 your employment there ended --

24 THE WITNESS: Right.

25 JUDGE SCHWARZBART: -- did you have any

1 conversation with any member of management --
Mr. Meisner, Mr. Erney, anybody -- with regard to
how long you would be there?

THE WITNESS: No.

We talked.

7 They asked me questions, what type of
8 place it is, but I don't think he ever came to me and
9 says, would you go back?

"Are you going to go back if the strike
ends tomorrow?"

Nothing like that, your Honor, was said
to me at the time.

I mean, I told him what type -- we talked
about the place, how we work and this and that.

That's just a conversation of talking,
1 you know.

17 JUDGE SCHWARZBART: Now, let me ask you
18 this:

19 Another question came up about the tools.

20 THE WITNESS: Yes.

21 JUDGE SCHWARZBART: Now, do you own tools?

22 THE WITNESS: Yes, I own tools.

23 JUDGE SCHWARZBART: Now, you testified,
24 in response to a question by Mr. Pearl, that the
25 tools that you owned remained behind in Brightman Iron

1 Works during the time that you worked for Emco?

2 THE WITNESS: Yes.

3 They're in a locker.

I mean, not knowing -- not knowing how
long the strike would last, you know, I -- I mean,
you don't know how long a strike will last.

I mean, we went out on strike. I didn't
8 have no job, right, and we're on strike. So I did it
9 before, I did it -- we were on strike the other times,
10 then I left the tools in the shop, and work clothes
11 there, too.

12 I mean, I don't know how long the strike
13 would last.

14 I mean, you bring them home, they'll be
15 laying over in a cellar.

16 I figured the best thing would be leave
17 them in the shop.

18 JUDGE SCHWARZBART: Is there any reason
19 why you left them in the shop, at Brightman?

20 THE WITNESS: Yes.

21 I mean, I --

22 MR. EDELMAN: I'm going to object, your
23 Honor, to any questions by yourself or anyone else
24 as to the state of the individual's mind.

25 JUDGE SCHWARZBART: I'm going to sustain

1 that and turn the witness back over to you.

2 MR. EDELMAN: Pardon me?

3 JUDGE SCHWARZBART: Continue with your
4 examination.

5 I've just sustained your objection.

6 MR. EDELMAN: Very well.

7 I have no further questions of the
8 witness.

9 MR. ZISKIN: I do.

10 JUDGE SCHWARZBART: Mr. Ziskin.

11 RECROSS-EXAMINATION

12 BY MR. ZISKIN-

13 Q Mr. Coli, you left the tools on the day of the
14 strike -- on the day the strike started; isn't that
15 right?

16 A Right.

17 Q And you went to work at Emco.

18 Isn't that right?

19 A Right.

20 Q Now, did you go back to Brightman and ask them
21 for your tools back while you were working at Emco?

22 A No.

23 Q Now, isn't it a fact that you intended to go
24 back to work to Brightman when the strike was over?

25 MR. EDELMAN: Objection.

1 MR. ZISKIN: I think it's most relevant.

2 JUDGE SCHWARZBART: I'm going to -- I've
3 just sustained an objection as to my own question.

4 MR. ZISKIN: I understand, your Honor.

5 JUDGE SCHWARZBART: Concerning the
6 subjective state, which I consider to be appropriate
7 without regard to who asks it.

8 I think what can be obtained here is what
9 was said and done.

10 BY MR. ZISKIN:

11 Q Now, you left the tools there; is that right?

12 A Right.

13 Q Now, after you were laid off at Emco, did you
14 go back to work at Brightman?

15 A No.

16 The strike was still on.

17 Q Okay.

18 Did you go and get your tools back from
19 Brightman?

20 A No.

21 Q Did you go to work anyplace else?

22 A No.

23 Q Did you ever get your tools back?

24 A No.

25 Q Your tools are still at Brightman?

1 A The shop is open, but they haven't called me
2 back yet.

3 Q Are your tools still at Brightman?

4 A They're still there, right.

5 Q Now, why are your tools still at Brightman?

6 A Well, I have no use for them now.

7 Q You don't intend to ever go and get them back?

8 MR. EDELMAN: Objection.

9 JUDGE SCHWARZBART: Sustained.

10 BY MR. ZISKIN:

11 Q The strike is over; is that right?

12 A The strike is over, yes.

13 MR. EDELMAN: Your Honor, my objection is
14 that if he's pursuing the same area, my objection
15 stands.

16 If not, I will remove my objection.

17 BY MR. ZISKIN:

18 Q Isn't it a fact that you have left your tools
19 there because you're waiting to get called back to
20 Brightman?

21 MR. EDELMAN: Objection.

22 JUDGE SCHWARZBART: There is no point in
23 playing around with this.

24 I'd like to find out what the witness'
25 testimony is with regard to why the tools are there.

1 MR. EDELMAN: Again, your Honor, it goes
2 to the subjective state of the witness' mind.

3 What he intended in his own mind is
4 immaterial to the working relationship that was
5 created by the words spoken by the parties at the
6 time of hire.

7 JUDGE SCHWARZBART: Well, let me ask --
8 I think there is some merit, on reconsideration, to
9 Mr. Edelman's objection.

10 What I think is german is this:

11 Did there ever come a time, in the
12 middle of July 'til early October, while you were
13 in Emco's employ, Mr. Coli, that the subject matter
14 of where your tools are was discussed between you
15 and any member of Emco's management?

16 THE WITNESS: No, no, there was no
17 reason to.

18 JUDGE SCHWARZBART: Well, let me ask
19 you this:

20 Based upon your experience and years in
21 the industry --

22 THE WITNESS: Because he had --

23 JUDGE SCHWARZBART: -- is it not
24 convention for skilled workmen such as yourself to
25 come to work with his own tools?

1 THE WITNESS: Yes and no.

2 I mean, some shops supply tools, and
3 some shops, they'll want you to bring your own. So
4 all different shops work different. All different
5 shops have different rules and the like.

6 JUDGE SCHWARZBART: I see.

7 So then it is your testimony, then, that
8 the subject matter of the -- that the subject of the
9 location of your tools did not come up?

10 THE WITNESS: No, because they had
11 welding shields.

12 JUDGE SCHWARZBART: Well, that's the
13 answer, yes or no.

14 THE WITNESS: No, no need for it.

15 JUDGE SCHWARZBART: Okay.

16 Mr. Ziskin?

17 BY MR. ZISKIN:

18 Q Now, you were working at Emco and you never --
19 I just want to -- you never went back to Brightman
20 to ask for your tools back while you were working at
21 Emco?

22 A No, I never went back.

23 Q You worked at Emco how many months?

24 A Oh, I think about 11 weeks, 11 or 12 weeks.

25 Q Now, when you were working at Brightman, did

1 you picket?

2 Did you go out when everyone went out?

3 A For the first two weeks, yes.

4 Q And where did you picket?

5 A In front of the shop, on Farmer's Boulevard.

6 Q And you stopped picketing, is that right,

7 and you went to work at Emco?

8 A Yes.

9 Q Did the other employees at Brightman continue
10 to picket?

11 MR. EDELMAN: Objection.

12 JUDGE SCHWARZBART: Overruled.

13 Go ahead.

14 A Yes.

15 Q So you stopped?

16 A Yes.

17 Q All your other brother members of Local 455
18 continued to picket at Brightman Iron Works but you
19 stopped picketing and took another job at a non-union
20 shop; is that right?

21 A Right, right.

22 Q Now, isn't it a fact that the reason that you
23 signed the card that Mr. Schifano gave you was
24 because you were afraid that if you didn't ^{sign} the
25 card, that Local 455 would take your pension away

1 from you or otherwise give you a difficult time in
2 the future?

3 MR. EDELMAN: I'm going to object to
4 this, your Honor.

5 JUDGE SCHWARZBART: Sustained.

6 A. No, not --

7 MR. EDELMAN: Please.

8 JUDGE SCHWARZBART: It's sustained.

9 THE WITNESS: Oh.

10 BY MR. ZISKIN:

11 Q I really don't understand why you didn't pick up
12 your tools from Brightman Iron Works after you went
13 to work at Emco.

14 MR. EDELMAN: I'm going to object to any
15 line of questioning in this regard.

16 JUDGE SCHWARZBART: I will sustain that.

17 MR. ZISKIN: Your Honor, I think it's
18 very relevant.

19 JUDGE SCHWARZBART: We're not going to
20 get involved with the witness' subjective state.

21 MR. ZISKIN: It goes --

22 JUDGE SCHWARZBART: Let me ask you --
23 just to clarify the point here, since under the rules
24 of evidence that I, as a matter of personal preference,
25 like to be specific with regard to the reasons for my

1 rulings.

2 The witness -- the Respondent-Employer
3 in this matter is not bound by Mr. Coli's subjective
4 state.

5 If in fact there has been testimony or
6 there may still be testimony with regard to any
7 conversations that may have been had between the
8 Respondent and Mr. Coli with regard to the whereabouts
9 of his tools, that's one thing.

10 But with regard to Mr. Coli's preferences
11 as to storage areas, that's something else, or at
12 least how he views them in his own mind.

13 MR. ZISKIN: May I have a moment?

14 I'd just like a recess for a minute.

15 JUDGE SCHWARZBART: Surely.

16 Off the record.

17 (Discussion off the record.)

18 JUDGE SCHWARZBART: Back on the record.

19 Are you prepared to proceed?

20 MR. ZISKIN: I have no further questions
21 of the witness at this time, your Honor.

22 JUDGE SCHWARZBART: Mr. Pearl?

23 MR. PEARL: Just one question.

24 RECROSS-EXAMINATION

25 BY MR. PEARL:

1 Q I asked you a question before, Dan, that you
2 answered in the -- that you answered yes to,
3 affirmatively, the fact that you were --

4 MR. EDELMAN: I'm going to object --

5 MR. ZISKIN: He hasn't asked the
6 question yet.

7 MR. EDELMAN: He's not asking a question.
8 That's the problem. He's stating facts.

9 If you have a question to be put to the
10 witness, put the question to the witness.

11 JUDGE SCHWARZBART: I think that an
12 objection; Mr. Edelman, should wait until the
13 completion of the question.

14 MR. EDELMAN: Very well, your Honor.

15 MR. PEARL: I'll have it read back.

16 Can you read that back?

17 JUDGE SCHWARZBART: Mr. Reporter.

18 (Record read.)

19 Q -- hired on a temporary basis.

20 Is that correct?

21 A That is correct.

22 MR. EDELMAN: Objection.

23 I'm going to object, one, to the question,
24 and I'm going to object, two -- well, two, I'll move.
25 to strike the answer.

1 As seen by the questions of yourself and
2 by my questions and I have had objected to earlier,
3 the witness is unfamiliar with terms of arguments
4 and calls for --

5 MR. ZISKIN: I don't know that that's --

6 MR. EDELMAN: -- and calls for a conclusion
7 of his mind and the operation of his mind.

8 I think that that's objectionable on the
9 ground that it -- that the answer that he gives calls
10 for the operation of the state of his mind.

11 What is important is what was said.

12 JUDGE SCHWARZBART: Off the record.

13 (Discussion off the record.)

14 JUDGE SCHWARZBART: Back on the record.

15 Would the witness step outside for a
16 few moments, please.

17 (Witness excused.)

18 JUDGE SCHWARZBART: Off the record.

19 (Discussion off the record.)

20 JUDGE SCHWARZBART: Back on the record.

21 BY MR. PEARL:

22 Q Dan, isn't it a fact that you called and spoke
23 to Mr. Erney sometime after the Brightman strike
24 started, regarding a job, rather than Mr. Meisner?

25 A If I called -- someone -- Jerry called my wife.

1 Q I'm asking you who you spoke to.

2 MR. EDELMAN: I think, your Honor, the
3 witness is answering the question the best he can,
4 frankly.

5 JUDGE SCHWARZBART: I think perhaps I
6 can be helpful.

7 A Well, I don't --

8 JUDGE SCHWARZBART: I think the first --
9 I think what Mr. Pearl is relating to is the first
10 contact between the company and yourself or you and the
11 company --

12 MR. PEARL: Correct.

13 JUDGE SCHWARZBART: -- with regard to
14 your employment.

15 THE WITNESS: Oh, I see; yes.

16 Well, I called, I did call that night.
17 But I'm not sure who I spoke to.

18 BY MR. PEARL:

19 Q Could it have been Mr. Erney?

20 A It could have been, yes, it could have been.

21 Q Now, did you relate to Mr. Erney your present
22 situation that Brightman was on strike?

23 A Well, he knew Brightman was on strike. So I
24 believe I went -- I went there the next day.

25 Q And -- go on.

1 A. I went there.

2 I don't know if I started the next day or the
3 day after.

4 I don't recall at this time.

5 Q And didn't you have a discussion with Sy that
6 day, Mr. Erney, regarding the fact that you needed the
7 job because Brightman --

8 MR. EDELMAN: I'm going to object.

9 It's his witness in connection with this
10 area and he's leading the witness.

11 It was he who introduced the area.

12 My only scope of testimony with Mr. Coli
13 was the authentication of the authorization card.

14 With respect to this whole are, your
15 Honor, it's his witness, and he's leading him, and
16 I'm objection to that.

17 MR. PEARL: Your Honor, for the reason
18 stated before, I'm trying to elicit --

19 MR. EDELMAN: I think the witness was asked
20 non-leading questions by myself and by the Administrative
21 Law Judge, and I think he answered the questions.

22 I think that you're leading him because
23 you went to try to get answers that you like.

24 I don't think that that's in the interest
25 of justice.

1 In any ever it's objectionable.

2 JUDGE SCHWARZBART: Perhaps you can
3 rephrase the question so that you can make this clear.

4 BY MR. PEARL:

5 Q Did you have a discussion with Mr. Erney when
6 you went to the plant the first day, that is, regarding
7 the job?

8 A Well, I believe he told me what he would pay.
9 Then we talked about other subjects, I mean
10 sports and what-not.

11 But --

12 JUDGE SCHWARZBART: Excuse me.

13 Sir, so that I am to understand your
14 testimony, the first time that you went to the job,
15 did you speak to Mr. Erney or Mr. Meisner, if you
16 remember?

17 THE WITNESS: Well, I probably spoke to
18 both. I'll put it -- both.

19 JUDGE SCHWARZBART: Well, what is your
20 testimony?

21 It can't be probably.

22 Either you spoke to one or you spoke to
23 the other or you spoke to both or you don't remember,
24 but it isn't probably.

25 THE WITNESS: Well, if I spoke to Meisner

1 or Erney, I mean -- I mean, I don't take notes. I
2 know I spoke to one of them. I mean, I know I called
3 up. I believe Sy Erney answered the phone.

4 JUDGE SCHWARZBART: Okay.

5 THE WITNESS: All right.

6 Then I went there the next day.

7 I don't know if I spoke to Sy or Jerry.

8 I mean, that's all I can say.

9 I mean, I don't remember, personally,
10 who I spoke to. Maybe I spoke to both because they're
11 both in.

12 They know me so long that -- I'd say both,
13 I spoke to both.

14 BY MR. PEARL:

15 Q And --

16 JUDGE SCHWARZBART: Did you speak to them
17 together or separately?

18 THE WITNESS: Well, I probably spoke to
19 Jerry first because Jerry was in the shop.

20 JUDGE SCHWARZBART: Well, "probably" is
21 not the way -- what happened?

22 THE WITNESS: Well, I'll say I don't
23 know; okay.

24 I don't know.

25 I mean, I don't know. I mean, I don't

1 remember that far back.

2 I mean, I --

3 MR. PEARL: Could we have the voluntary
4 statement stricken from the record?

5 No questions was propounded.

6 THE WITNESS: If you ask me --

7 JUDGE SCHWARZBART: Mr. Coli, please.

8 Off the record.

9 (Discussion off the record.)

10 JUDGE SCHWARZBART: Back on the record.

11 BY MR. PEARL:

12 Q Daniel, the telephone call that you made,
13 what was the discussion that you had with either
14 Jerry or Sy Ernie when you called that evening?

15 What did you say to them and what did they
16 say to you?

17 Can you remember?

18 A Well, they -- I think it was Jerry.

19 He asked me if I wanted a job. He aske me
20 if I, you know, was available.

21 I says, "Yes."

22 Q That's the extent of it?

23 A Well, then I went there the next day.

24 He told me what he would pay me.

25 I said, "Okay."

1 I have to add one thing: I got permission
2 from the union to take the job.

3 MR. EDELMAN: Objection.

4 Motion to strike.

5 Not responsive.

6 JUDGE SCHWARZBART: Granted, motion
7 granted.

8 Please simply answer the questions that
9 are asked of you, don't volunteer.

10 MR. PEARL: I have no further questions.

11 MR. ZISKIN: No further questions.

12 JUDGE SCHWARZBART: Mr. Pearl, I understand
13 from our off-the-record discussion that you had with-
14 drawn a question that you had put to the witness
15 earlier concerning a repeat of whether he was a
16 temporary employee, or something, to which Mr. Edelman
17 had objected just before our somewhat earlier recess.

18 Is that correct?

19 MR. PEARL: Yes, I believe it's correct.

20 JUDGE SCHWARZBART: That statement wasn't
21 on the record, so the questions was hanging.

22 MR. PEARL: It wasn't?

23 JUDGE SCHWARZBART: No.

24 In other words, the statement that you
25 were going to withdraw the question was not on the record.

1 MR. PEARL: Oh.

2 JUDGE SCHWARZBART: You do withdraw that
3 question?

4 MR. PEARL: Yes.

5 JUDGE SCHWARZBART: Okay.

6 Thank you.

7 MR. PEARL: I just have a few more
8 questions.

9 BY MR. PEARL:

10 Q In that telephone conversation, was anything
11 said by Mr. Erney or Mr. Meisner as to whether the
12 job --

13 MR. EDELMAN: I'm going to object, your
14 Honor.

15 JUDGE SCHWARZBART: Mr. Edelman, I
16 have stated that --

17 MR. EDELMAN: I'm sorry, I'm sorry, I'll
18 wait 'til the question is finished.

19 BY MR. PEARL:

20 Q -- the job was permanent or temporary?

21 MR. EDELMAN: I'm going to object.

22 JUDGE SCHWARZBART: I'll allow it.

23 A No, nothing was mentioned.

24 MR. EDELMAN: I withdraw my objection.

25 MR. PEARL: All right, I have no more

* * *

1 MR. PEARL: What was that number?

2 G. C. 6 or 5?

3 MR. EDELMAN: That's G. C. 5.

4 JUDGE SCHWARZBART: Does anyone have
5 anything further of the witness?

6 MR. EDELMAN: No.

7 MR. ZISKIN: No.

8 MR. PEARL: No.

9 JUDGE SCHWARZBART: Thank you.

10 (Witness excused.)

11 MR. EDELMAN: Your Honor, I wonder if I
12 could take a -- it's a good time, I think, in any
13 event for a recess.

14 I want to get him his witness sheet to
15 sign.

16 JUDGE SCHWARZBART: Ten-minute recess.

17 (Recess taken.)

18 (Recess over at 3:30 P. M.)

19 JUDGE SCHWARZBART: Back on the record.

20 Mr. Edelman, who will be your next
21 witness?

22 MR. EDELMAN: Mr. Frick.

23 Whereupon JOHN FRICK, was called as a
24 witness, and having been first duly sworn by the
25 Administrative Law Judge, was examined and testified

as follows: 195a

DIRECT-EXAMINATION

BY MR. EDELMAN:

Q Would you please state your full name for the record?

A John Frick.

Q How do you spell that, Mr. Frick?

A F - R - I - C - K.

Q Are you presently employed, Mr. Frick?

A Yes, I am.

Q And the name of your employer?

A Gus Pruess.

Q Is that an employer?

A Yes.

Q How long have you been employed by this employer, Gus Pruess?

A Well, now only about a month. But before I worked for him about three years.

Q And where did you work for him?

A Where?

Q Yes.

Did he have his own shop?

A Yes.

Q Were you ever employed by Emco Steel?

A Yes, I was.

1 Q And on or about when did you begin your
2 employment at Emco?

3 A About mid summer of last year.

4 Q And on or about when did your employment
5 terminate at Emco?

6 A What do you mean, end?

7 Q Yes, end.

8 A About a month and a half ago.

9 Q About a month and a half ago?

10 A Something like that, yes.

11 Q And can you tell me the type of termination
12 it was?

13 Did you quit?

14 Were you laid off?

15 Were you fired?

16 A No; I was laid off, no more work.

17 Q Is there a labor organization at Gus Pruess?

18 A No.

19 Q No union?

20 A There's no unions, no, not whatsoever.

21 Q Are you a member of any labor organization?

22 A Yes, I am.

23 Q Which labor organization is that?

24 A 810.

25 Q How long have you been a member of 810?

1 A Four months, something like that.

2 Q And is your membership in Local 810 in connection
3 with your employment at Emco Steel?

4 A What do you mean?

5 Q In other words, the first time you became a
6 member of Local 810, you were employed by Emco Steel?

7 A Yes, right.

8 JUDGE SCHWARZBART: Excuse me.

9 810 of which International?

10 MR. EDELMAN: Teamsters.

11 JUDGE SCHWARZBART: Let the witness.

12 MR. EDELMAN: Oh, I'm sorry, I thought
13 you were asking me the question.

14 JUDGE SCHWARZBART: With which union is
15 Local 810 affiliated, which International?

16 THE WITNESS: I don't know. I guess Sy
17 would know. I don't know. I have no idea.

18 JUDGE SCHWARZBART: Local 810 is the
19 only -- do you know whether it is affiliated with a
20 parent union or --

21 THE WITNESS: Steel Workers, something like
22 that.

23 I don't know. I don't really know.

24 BY MR. EDELMAN:

25 Q Is it the union -- the 810 that you referred to,

1 is that the union that presently represents the
2 employees at Emco?

3 A Right.

4 Q Are you still paying your dues to this local 810?

5 A Yes, I am.

6 I'm about two months behind because I don't
7 know what's going to go on with it and so on and so
8 forth, because I never was in the union before.

9 Q I see.

10 In other words, you're a little bit behind in
11 the dues?

12 A Right, okay.

13 Q Now, were you employed by Emco Steel during
14 the month of September of 1975?

15 A I don't know.

16 Q Well, you were working there, you began working
17 there, I think you testified --

18 A In the summertime.

19 Q -- in the summertime?

20 A Right about the summertime.

21 Q Do you recall -- well, let me -- I show you
22 G. C. 6 for identification, and ask you if you've ever
23 seen that card?

24 (Handing.)

25 A Yes, I did.

- 1 Q Is that your signature on the card?
- 2 A Yes, it is.
- 3 Q That is your signature; is that correct?
- 4 A Right.
- 5 Q And did you date that card?
- 6 A Right.
- 7 Q You dated it?
- 8 A Right.
- 9 Q And I take it that that's an accurate date,
10 to the best of your knowledge?
- 11 A Right.
- 12 Q Now, on the reverse side of the card, the little
13 hole there, is printed the name of John Frick and the
14 address, Hamilton Beach, Queens.
- 15 Did you print that out?
- 16 A Right, I did.
- 17 Q Can you tell me who gave you the card?
- 18 A Tony Schifano.
- 19 Q All right.
- 20 And can you describe how he happened to come
21 to give you this card?
- 22 A Yes.
- 23 We was in the shop.
- 24 Q And when you say "we," who is "we"?
- 25 A Me and Danny --

1 Q Coli?

2 A Yes.

3 We was at the shop. We was working. Tony had
4 come around a couple of times before that but never
5 said nothing to me.

6 He had talked to Danny because they had known
7 each other for a little while.

8 We started talking about unions.

9 He asked me if I was ever in a union. I told
10 him no, I never was in a union and I didn't care if
11 I ever got in one.

12 So he was talking to Danny, talking to Danny.
13 He gave Danny that card. Danny started filling it out.
14 So he gave me the card, and I filled it out. I filled
15 out that card, I thought I was getting brochures on
16 a union of what was in it.

17 Q Well, did Mr. Schifano say anything to you
18 when he gave you the card?

19 A He asked me for the name and address.

20 I filled out my name and address.

21 He stuck it in his pocket and told me not to
22 say nothing.

23 Q Okay.

24 And you -- I want to know, because you indicated
25 you thought you were getting brochures, I would like to

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* * *

1 on the day when Mr. Schifano gave you the card.

2 THE WITNESS: All right.

3 JUDGE SCHWARZBART: So I believe you
4 testified that you and Mr. Coli were in the Emco yard
5 at the time.

6 THE WITNESS: Working, right.

7 JUDGE SCHWARZBART: Now, Mr. Schifano
8 entered.

9 Is that correct?

10 THE WITNESS: Right.

11 JUDGE SCHWARZBART: Now, did Mr. Schifano
12 speak first?

13 THE WITNESS: Yes, he did.

14 He asked --

15 JUDGE SCHWARZBART: What did he say and
16 then what was said and so on?

17 THE WITNESS: Well, he asked us if
18 Tommy the foreman was around or the bosses.

19 I told him no, there's nobody in but us,
20 that Tommy is out.

21 He asked me when Tommy was going to be
22 back.

23 I told him that I don't know if he's going
24 to be back today at all.

25 He said that's all right, I'll see him

1 tonight. That's when he brought out them cards.

2 He gave them to us. That's when I filled
3 out my name on it, the address on it, so on and so
4 forth.

5 I gave the card to Tony.

6 He slipped the card in his pocket and
7 said for me not to say nothing about it.

8 He said, "I'll see the bosses later."

9 I let it go at that. I didn't ask
10 anything more about it or say anything more about it.

11 When that happened to me, I said,
12 "Something doesn't sound right."

13 MR. EDELMAN: I'm going to object to that.

14 JUDGE SCHWARZBART: You see, Mr. Frick,
15 we can't receive testimony as to your state of mind.

16 In other words, what you were thinking
17 is not material.

18 All we can talk about is what was said
19 and done.

20 THE WITNESS: Oh, okay, okay, your Honor.

21 JUDGE SCHWARZBART: Now, you testified
22 that he came in and asked where the boss was and so on.

23 THE WITNESS: Right.

24 JUDGE SCHWARZBART: Was anything said
25 between the time that he gave you the card and the time

1 you signed it?

2 THE WITNESS: Other than if he asked me
3 if I was in the union, so on and so forth?

4 JUDGE SCHWARZBART: Well, just whatever
5 was said.

6 THE WITNESS: No.

7 That was about it.

8 JUDGE SCHWARZBART: Now, when did he ask
9 whether you were in the union?

10 THE WITNESS: Well, when we first started
11 talking, because that was about the first time that I
12 met Tony, you know, was introduced to Tony, that was
13 the first time.

14 JUDGE SCHWARZBART: Okay.

15 Just go back a little bit so we can
16 reconstruct it.

17 THE WITNESS: Okay, your Honor.

18 JUDGE SCHWARZBART: Now, Tony came into
19 the yard.

20 THE WITNESS: Yes.

21 JUDGE SCHWARZBART: You hadn't seen him
22 before?

23 THE WITNESS: I seen him once before, you
24 know, in and out, and that was it. I never talked to
25 him, you know, as far as knowing his name or anything

1 like that.

2 JUDGE SCHWARZBART: Okay.

3 Now, this is very important, so we'll try
4 to do it step by step.

5 THE WITNESS: Okay.

6 JUDGE SCHWARZBART: So when he came in,
7 who was the first one to speak, as you recall it?

8 THE WITNESS: Danny -- no.

9 He was the first one to talk to Danny.

10 JUDGE SCHWARZBART: Okay.

11 So how close to them were you at the time?

12 THE WITNESS: On the opposite end of the
13 shop.

14 You know, they was on one side and I
15 was on the other side.

16 JUDGE SCHWARZBART: You were in the yard
17 of the shop?

18 THE WITNESS: Yes.

19 We were working in the yard.

20 JUDGE SCHWARZBART: I see.

21 THE WITNESS: I was in the yard when he
22 was talking to him.

23 Hello, Danny, how are you, so on and so
24 forth.

25 I was on the other side of the shop, you

1 know.

2 JUDGE SCHWARZBART: About how far in
3 terms of feet were you?

4 THE WITNESS: 20 feet.

5 JUDGE SCHWARZBART: Could you hear what
6 was said?

7 THE WITNESS: More or less, yes.

8 Like, how were you doing? And then Danny
9 asked how was this person, how was is that person, so
10 on and so forth?

11 And that was it. That's when I came over.

12 Then he said, this is Tony Schifano, so
13 on and so forth.

14 JUDGE SCHWARZBART: At that point, is it
15 your testimony that Danny introduced you to Mr. Schifano?

16 THE WITNESS: Right.

17 That's why I first -- that's the way I
18 first got introduced to Tony.

19 JUDGE SCHWARZBART: Okay.

What was said then after you met him?

20 THE WITNESS: Hello, I'm Tony, so on and
21 so forth.

22 And that was about it.

23 And that's when he asked me if I was a
24 union member, if I've ever been in a union.
25

1 JUDGE SCHWARZBART: That was when who
2 asked you?

3 THE WITNESS: Tony, if I was in the
4 union -- he asked me when he was standing there, is
5 he in the union?

6 I said that I was never in one before and
7 I'm not in one now.

8 That was the end of that.

9 Then he talked on and talked on about the
10 union this, the union that, it's got benefits, it's
11 got this, it's got that. That's when he gave me the
12 card.

13 He said to give me your name and address.

14 So I put the name and address down on
15 the card.

16 He picked the card up. He put it in
17 his pocket and says, "Don't say nothing."

18 He asked me again if Tommy was going to
19 be back today.

20 I told him no.

21 He said, "Okay, I'll see Tommy tonight."

22 Okay.

23 That was the end of that.

24 He said, "I'll see the bosses later."

25 And that was the end of that.

CSA Reporting

1 Mr. Pearl?

* * *

2 MR. PEARL: Yes.

3 JUDGE SCHWARZBART: The document is
4 received.

5 (The above-mentioned was received
6 and marked as General Counsel's
Exhibit #6 into evidence.)

7 MR. EDELMAN: I have no further questions
8 of the witness, your Honor.

9 JUDGE SCHWARZBART: Mr. Pearl.

10 MR. PEARL: That's G. C. 6?

11 MR. EDELMAN: Yes.

12 CROSS-EXAMINATION

13 BY MR. PEARL:

14 Q John, about what date did you start working
15 at Emco Steel?

16 A What day?

17 Q What date, what month?

18 A What date?

19 Q Yes.

20 A Last month.

21 Q Emco?

22 A Emco, right, last month, I started working
23 there.

24 Q Started?

25 A Started?

1 Q Yes.

2 A I don't know what month. That, I don't know.

3 Q It was in the summer?

4 A It was in the summertime.

5 Q And who was -- who were your co-workers?

6 A Just Tommy.

7 Q Tom?

8 A Yes, Tom, the foreman.

9 Q Did subsequently another employee work along
10 with you?

11 A Danny.

12 Q A month or so later?

13 A Oh, a lot later than that. Danny came to the
14 shop then.

15 Q What did Danny do?

16 A He was a welder, a burner, so on and so forth.

17 Q Did you ever have any discussion with Danny --

18 A Yes, a lot of times.

19 Q -- regarding work?

20 A Yes, a lot of times.

21 Q You were close?

22 A Yes, we were close, real close.

23 Q Did you have any conversation with him regarding
24 his employment at Emco?

25 A Yes.

1 I asked him if he was staying there permanently.

2 He told me, "No."

3 So --

4 MR. EDELMAN: I'm going to object.

5 MR. PEARL: May I be heard on that?

6 JUDGE SCHWARZBART: Yes.

7 MR. PEARL: I'm hopefully asking what
8 counsel considers to be a proper question of a
9 discussion that the witness had between himself and
10 his co-worker.

11 JUDGE SCHWARZBART: Mr. Ziskin?

12 MR. ZISKIN: I presume that with more
13 development and more questions, that's a most relevant
14 question with regard to the employment status which is
15 in issue.

16 MR. EDELMAN: I'm going to object.

17 I don't think it is relevant to the
18 employment status.

19 JUDGE SCHWARZBART: Well, obviously I
20 do not consider this to be information that is binding
21 in any way or knowledge attributable to the company
22 with regard to the status.

23 I'm going to allow it for what it is
24 worth.

25 BY MR. PEARL:

1 Q What, if any, conversations did you have with --

2 A Oh, we talked about welding, his other jobs,
3 you know, where he worked before he came to Emco
4 Steel, you know, and some of the people that he worked
5 with.

6 And that was about it.

7 You know, he told me about that he was a
8 certified welder. Because I asked him -- I wanted
9 to be a certified welder.

10 I asked him information about that. And he
11 gave me information that I asked him about.

12 Q Well, did he explain his function at Emco,
13 what he was to do?

14 A Well, he does what I do, welds, burns, fits,
15 you know, does beam work like I do.

16 Q And did he have -- had he related to you the
17 reasons for leaving his previous employment or place
18 where he was employed?

19 A He wasn't employed, he was on unemployment, I
20 believe. That's when he came there to see Sy and
21 Jerry and asked them if they had any work.

22 Q Well, where --

23 MR. EDELMAN: I'm going to move to object
24 to that conversation, your Honor, unless the witness
25 was a witness to that conversation.

* * *

1 BY MR. PEARL:

2 Q Had you at any time written a letter to the
3 union?

4 A I wanted to, but I didn't.

5 Wait a minute.

6 Yes, I did.

7 I did so write a letter to it asking for this
8 card back.

9 MR. PEARL: I ask that this be marked for
10 identification.

11 (The above-mentioned was received
12 and marked as Respondent's Exhibit
#1 for identification.)

13 MR. PEARL: Here.

14 (Handing.)

15 MR. EDELMAN: I've seen it.

16 BY MR. PEARL:

17 Q I show you Respondent's Exhibit 1.

18 Is that your signature on the letter?

19 (Handing.)

20 A Yes, it is.

21 Q Would you explain the content of the letter
22 and the reason why you wrote the letter?

23 A Yes.

24 The reason why I wrote this letter was --

25 JUDGE SCHWARZBART: We're dealing with the

* * *

* * *

1 When in fact he wrote the card, at what
2 point in time, is another matter.

3 As his testimony reflects on that, your
4 Honor, I do not move that it be stricken.

5 As it reflects on the operation of his
6 mind, I move that it be stricken.

7 JUDGE SCHWARZBART: May I see the card,
8 please, counsel?

9 MR. PEARL: Yes, sir.

10 (Handing.)

11 JUDGE SCHWARZBART: To cut through this,
12 Mr. Frick, you testified that on or about September
13 15th, 1975 you signed a card --

14 THE WITNESS: Right.

15 JUDGE SCHWARZBART: -- and under the
16 circumstances you previously described.

17 THE WITNESS: Right.

18 JUDGE SCHWARZBART: At the time -- before
19 you signed that card, had you read this card?

20 THE WITNESS: No, never.

21 JUDGE SCHWARZBART: Did you have a
22 discussion with Mr. Schifano or Mr. Coli with regard
23 to the contents of the card?

24 THE WITNESS: No.

25 JUDGE SCHWARZBART: Objection overruled.

* * *

1 evaluate this testimony has been pretty clear from
2 my prior statements in the record.

3 My rulings will stand and the testimony
4 as presently elicited will remain in the record.

5 Let's proceed.

6 MR. PEARL: Well, your Honor, I'd like
7 to offer this into evidence at this time.

8 (Handing.)

9 JUDGE SCHWARZBART: What is the date of
10 the letter?

11 MR. EDELMAN: The date?

12 JUDGE SCHWARZBART: Yes.

13 MR. EDELMAN: 10-14-75, your Honor.

14 No objection, your Honor.

15 Well, on second thought, your Honor, I
16 think I'd like to ask a little voir dire of the
17 witness.

18 JUDGE SCHWARZBART: May I see the letter
19 for a moment, please?

20 MR. EDELMAN: Certainly.

21 (Handing.)

22 VOIR DIRE-EXAMINATION

23 BY MR. EDELMAN:

24 Q Mr. Frick --

25 A Yes, sir.

1 Q -- you sent this letter to Local 455; is that
2 correct?

3 A That's right.

4 Q And that is in your handwriting; is that
5 correct?

6 A That's correct.

7 Q And you wrote it, it would appear, on legal pad
8 that would be lined paper; is that correct?

9 A On lined paper, yes.

10 Q I see.

11 Now, Mr. Frick, did anybody tell you to write
12 that letter?

13 A This one here (Indicating)?

14 Q Yes.

15 A No.

16 I asked if I could write this letter.

17 Q Whom did you ask?

18 A Who did I ask?

19 Q Yes, right.

20 A A friend of mine that's up and up on unions.

21 I asked him what I can do to get my card back,
22 because --

23 Q Did you have any conversation with Mr. Erney
24 or Mr. Meisner concerning this letter?

25 A No, not at all.

1 I went into the office and asked them where
2 I would have to write to to get my card back.

3 Q You asked who who you would have to write
4 to get your card back?

5 A Sy Erney.

6 Q And this was on October 14th?

7 A Right.

8 Q And Mr. Erney was in the office on October 14th?

9 A Yes.

10 Q And was anyone else in the office on October
11 14th when you asked him about that?

12 A No.

13 Q Anybody from Local 810 in the office when
14 you asked him?

15 A No.

16 Q Do you know a Mr. Dennis Silverman?

17 A Yes, I do.

18 Q And was Mr. Dennis Silverman in the office
19 when you asked him?

20 A No, he wasn't.

21 Q Now, you sent the letter, so obviously you
22 don't have the original letter, you have a duplicate.

23 A Right.

24 Q Where did you make the duplicated copy?

25 A What do you mean where did I make the duplicated

1 copy?

2 Q Well, on whose machine?

3 A I didn't make it on no machine, I wrote it
4 on a plain piece of paper.

5 Q Right.

6 But this is a duplicate of what you wrote;
7 is that correct?

8 A Right.

9 Q And where did you make this copy?

10 A You mean write it?

11 Q No.

12 This is a duplicated copy of something that
13 you wrote; is that correct?

14 (Handing.)

15 A Right.

16 Q Where did you make this duplicated copy?

17 A I didn't.

18 Q Who did?

19 A I don't know.

20 Q You don't know who made it?

21 A No, I don't.

22 Q You only sent one copy of the -- you only sent
23 an original to the union?

24 A Why not?

25 Q I'm not asking for a question in return to my

1 questions, just answer the question.

2 A Yes, I sent an original letter, right.

3 Q And you did not make a duplicate?

4 A No, I didn't.

5 MR. EDELMAN: I object to the admission
6 of this document into evidence, your Honor.

7 BY MR. EDELMAN:

8 Q You don't know where that came from?

9 A No.

10 JUDGE SCHWARZBART: After you wrote
11 your letter to the union, the original to Respondent's
12 Exhibit 1, what, if anything, did you do with that
13 letter?

14 Did you give it to anybody?

15 THE WITNESS: No.

16 I mailed it.

17 JUDGE SCHWARZBART: Did you show it to
18 anybody before you mailed it?

19 THE WITNESS: No.

20 JUDGE SCHWARZBART: Did you --

21 THE WITNESS: I just told my foreman that
22 I wrote a letter to get my card back, because I had
23 asked for my card back before from Tony and I never got
24 it back.

25 And that was my reason for writing this

1 letter, to get my card back.

2 JUDGE SCHWARZBART: By your foreman, who
3 do you mean?

4 THE WITNESS: Tommy, Tom -- whatever his
5 last name is; I don't know.

6 JUDGE SCHWARZBART: Did you show the
7 letter to Tommy?

8 THE WITNESS: No, I didn't.

9 JUDGE SCHWARZBART: Where were you when
10 you wrote the letter?

11 THE WITNESS: Outside in the shop.

12 JUDGE SCHWARZBART: Was there a time
13 when the letter was unattended?

14 THE WITNESS: Well, the whole afternoon.

15 JUDGE SCHWARZBART: Can you explain
16 that, please?

17 THE WITNESS: Yes.

18 It was in my locker.

19 This was during working hours when I
20 wrote this outside.

21 JUDGE SCHWARZBART: Did anybody know
22 where the letter was?

23 THE WITNESS: It was right there, right
24 in the locker. Anybody could have seen it, you know,
25 a letter. That was all it was.

* * *

1 And when did you mail the letter?

2 THE WITNESS: That same day.

3 JUDGE SCHWARZBART: Before or after you
4 left work?

5 THE WITNESS: After I left work.

6 JUDGE SCHWARZBART: Is it your testimony
7 that that is a true Photocopy of the letter that you
8 wrote on that day?

9 THE WITNESS: Right.

10 MR. EDELMAN: Well, if you have no
11 more questions, your Honor, there may be a few that
12 I would like to ask the witness.

13 JUDGE SCHWARZBART: Yes, of course.

14 VOIR DIRE-EXAMINATION (CONTINUED)

15 BY MR. EDELMAN:

16 Q When you -- when you sent the letter, Mr. Frick,
17 did you send it registered mail?

18 A No.

19 I just dumped it in the mailbox.

20 Q Just a regular letter?

21 A Yes.

22 Q And when you wrote the letter, did you -- did
23 you put it in an envelope?

24 A Yes, I put it in a long envelope.

25 Q And you sealed it?

* * *

* * *

1 So as Mr. Schifano came out of the office --

2 THE WITNESS: Right.

3 JUDGE SCHWARZBART: -- you saw him in
4 the yard?

5 THE WITNESS: Right.

6 JUDGE SCHWARZBART: Who spoke first?

7 THE WITNESS: I did.

8 JUDGE SCHWARZBART: What did you say to
9 him and what did he say to you and so on?

10 THE WITNESS: I says, "Tony," I said,
11 "I'd like to get my card back from that union because
12 I don't want to be in it."

13 At the time I told him, and I, also,
14 told Tony, that my brother-in-law was going to go
15 into business for himself and I didn't know if I was
16 staying with Emco Steel or not.

17 "And I says, "I'd like to have my card
18 back."

19 And that was all I said to him.

20 And he said, "All right."

21 And that was the last I saw of him. I
22 never received my card back. I waited a week. And
23 then I wrote this letter.

24 JUDGE SCHWARZBART: At the time you
25 wrote the letter, was anybody present?

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CSA Reporting

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1 to frame objections.

2 MR. EDELMAN: I'm sorry, your Honor.

3 I apologize.

4 JUDGE SCHWARZBART: We presume that if
5 you had been impressed by the point, you would not
6 have objected.

7 MR. EDELMAN: Yes, your Honor.

8 MR. PEARL: All right.

9 I have no further questions.

10 JUDGE SCHWARZBART: Mr. Ziskin?

11 MR. ZISKIN: Yes.

12 CROSS-EXAMINATION

13 BY MR. ZISKIN:

14 Q Mr. Frick, as I understand your testimony, you
15 testified that Mr. Schifano gave you this card, which
16 is General Counsel's Exhibit 6.

17 Is that right?

18 (Hanging.)

19 A Right.

20 Q And as I understood your testimony when the
21 Administrative Law Judge asked you a question, you
22 didn't read the card?

23 A Right.

24 Q Okay.

25 When you were given the card, did -- it was

1 given to you by Mr. Schifano; is that right?

2 A Right.

3 Q Did he read the card to you?

4 A No.

5 Q Now, I see that your name is on the back of
6 the card and there's an address.

7 A Right.

8 Q And whose handwriting is that?

9 A That is mine.

10 Q Okay.

11 Now, did he say anything -- how did it come
12 to pass that your name and your address appeared on
13 the back of the card?

14 A Because that's what he asked me for, for my
15 name to be put on the card.

16 Q Did he tell you the purpose or reason why he
17 wanted you to put your name and address on the back
18 of the card?

19 A No.

20 Q He gave you no reason?

21 A No.

22 Q Okay.

23 When he gave you the card, did he tell you
24 what purpose that he was going to use the card for?

25 A No.

1 Q Did he tell you --

2 A Because if I --

3 Q No, no.

4 I just asked you -- just wondered if he gave
5 you any reason why he want I to sign the card.

6 Did he?

7 A No.

8 Q Did he tell you anything about the card itself?

9 A No.

10 Q Did he explain the card to you or tell you
11 anything about it that you remember?

12 A No.

13 Q Now, just tell me what did he do, just for the
14 Administrative Law Judge, if you can?

15 Now, I understand that you were in the yard --

16 A Right.

17 Q -- and was there --

18 A Right.

19 Q -- and he gave you the card.

20 A Right.

21 Q What do you recollect, if anything, that he
22 said to you when he gave you this card?

23 A Okay.

24 He said, "John, fill out this card. Give me
25 your name and address."

1 I wrote down my name and address. He discussed
2 it in his pocket.

3 He said for me not to say anything about it.

4 He told me he would see Tommy tonight.

5 Q He didn't explain what he was going to do with
6 it or anything of that nature?

7 A No.

8 MR. ZISKIN: I have no further questions
9 of the witness.

10 MR. EDELMAN: I have a few more questions
11 of the witness, your Honor.

12 REDIRECT-EXAMINATION

13 BY MR. EDELMAN:

14 Q Now, in connection with the General Counsel's
15 Exhibit 3, you state that you signed your name here.

16 Is that correct?

17 (Handing.)

18 A That's correct.

19 Q And you signed it because Mr. Steve Silverman
20 asked you to sign it?

21 A He says, "Sign this document."

22 I signed the document, but I didn't sign that
23 document until I read what was in that paper.

24 Q Right. I see.

25 You read what was in this paper when you signed

1 the document?

2 A I read what was in that paper, right.

3 JUDGE SCHWARZBART: Indicating General
4 Counsel's Exhibit 3?

5 MR. EDELMAN: Yes.

6 BY MR. EDELMAN:

7 Q But you didn't read what was in a card that
8 Mr. Schifano asked you to sign?

9 That's right.

10 Q I see.

11 And this paper is a contract which is eight by
12 ten paper or 11 by 14 or eight by 14, whatever it is,
13 with single space typing and some nine pages, and you
14 read through that.

15 A Right.

16 Q That is, before you signed it.

17 Is that correct?

18 A Right.

19 Q But you did not read a simple three by five
20 card with five or six lines on it.

21 Is that correct?

22 A Right.

23 Q So when Steve Silverman said sign it, you
24 read it?

25 A No.

* * *

1 Well, you've, also, testified that you signed
2 a card for Local 810, is that correct, an authorization
3 card?

4 A Right.

5 Q Did you sign the card before you signed the
6 contract?

7 A Yes, I did.

8 Q You signed the card -- would you say that you
9 signed the card a week or so before you signed the
10 contract?

11 A Three days, four days.

12 Q Three or four days?

13 A I would say so, yes.

14 Q Now, at the time that you signed the contract,
15 was Mr. Silverman present with Mr. Erney?

16 A I think so.

17 Q By the way, did you take part in negotiating
18 this contract at all?

19 A What do you mean?

20 Q Well, did you -- were you present when they
21 were talking about what would be in the contract?

22 A Parts of it.

23 Q Were you present during negotiations between
24 the -- do you know what negotiations are?

25 A What?

1 Settlement of what's in --

2 Q Well, discussing what a contract is all about
3 what it's going to contain.

4 A No.

5 Q You were not present --

6 A No.

7 Q -- during these negotiations?

8 A No.

9 Q I see.

10 Now, Mr. Frick, did you sign the card, the
11 eight by ten card -- did you sign the card before you
12 wrote the letter to the union, Local 455, requesting
13 withdrawal?

14 A No; this was after.

15 Q You signed your Local 810 card after you wrote
16 this letter or before you wrote this letter?

17 A After I wrote this letter.

18 Q When you signed a Local 810 card, were you
19 told to by Mr. Silverman -- did Mr. Silverman give
20 you the Local 810 card to sign?

21 A Right.

22 Q He came around?

23 A Right.

24 Q And did he tell you that he was organizing the
25 employees?

1 A. Right.

2 Q And did he tell you that he wanted you to sign
3 a card so that he could negotiate a contract with
4 the employer?

5 A He told me what that card was about and what
6 the card meant and what his part was in, you know,
7 after I signed that card.

8 Q What did he tell you about the card?

9 A He told me that if I signed this card, it was
10 for him to represent me to the boss to form a union
11 in the shop.

12 Q Very good.

13 So that you signed the card and then -- do
14 you recall the date that you signed the card?

15 A No, I don't.

16 Q For Local 810.

17 A No, I don't.

18 Q Did other employees sign this same card?

19 Do you know?

20 A Yes.

21 Q Were you present when they signed these cards?

22 A Yes, I was.

23 Q And can you tell me who it was that signed
24 such cards?

25 A My foreman, Tommy did, and that's how I know.

- 1 Q McGovern signed this card?
- 2 A Right.
- 3 Q Did anybody else sign this card?
- 4 A Not that I know of.
- 5 Q Was Mr. Erney or Mr. Meisner present?
- 6 A Yes, they was and the representative of
7 Local 810 was.
- 8 Q I see.
- 9 Where were these cards signed?
- 10 A In the office.
- 11 Q In Mr. Erney's office?
- 12 A Yes.
- 13 Q And how did you and Mr. McGovern happen to be
14 in Mr. Erney's office at this time?
- 15 A We were called in by the representatives.
- 16 Q Called in by the representatives?
- 17 A Right.
- 18 Q And when you were called in by the representatives,
19 this was the office with the drafting board in it?
- 20 A Right.
- 21 Q And how large an office is this?
- 22 A It's quite large.
- 23 Q Is it as large as this room or larger?
- 24 A Bigger.
- 25 Q Much bigger?

1 A A lot larger.
2 Q A lot larger?
3 A Yes.
4 Q All right.
5 Where was Mr. Erney and where was Mr. Meisner?
6 A About ten foot away from us.
7 Q I see.
8 And Mr. Silverman was there?
9 A Right.
10 Q And anybody else from Local 810?
11 A Yes.
12 Q Who?
13 A There was another gentleman there.
14 Q Do you know his name?
15 A No, I don't.
16 Q And who from the company was there?
17 Mr. Meisner and Mr. Erney?
18 A Yes, they was.
19 Q All right.
20 And just you and Mr. McGovern were there?
21 A Yes.
22 Q I see.
23 And you had a conversation with Mr. Silverman?
24 A Yes, I did.
25 Q Was it Steve Silverman?

* * *

1 We'll refer to it as the Local 810 card.

2 THE WITNESS: Okay.

3 BY MR. EDELMAN:

4 Q When you signed this Local 810 card, it was
5 several days before you signed this contract?

6 A Yes

7 Q And that's when you were summoned into the
8 boss'es office; is that correct?

9 A Right.

10 Q Now, can you tell me what the discussion was
11 between you and Mr. Silverman or Mr. Erney?

12 A Yes.

13 About the contract here that's laying on the
14 desk and about that card.

15 Q All right.

16 So you signed the card and you looked over
17 the contract at that time?

18 A Right.

19 He explained the contract to us.

20 He told us that he would get back to us if
21 there was any questions that had to be answered.

22 Q I see.

23 And then several days later --

24 A Is when I signed the card.

25 Q -- is when you signed the contract?

1 A Right.

2 Q So you looked at the contract, you signed the
3 contract, you looked at the card and you signed the
4 card at this time; is that correct?

5 A Yes.

6 Q Now, what about Mr. McGovern, what did he do?

7 Well, he talked with Steve and asked Steve
8 questions about the contract because there were certain
9 things in there that he didn't understand.

10 Steve explained to him what he wanted to know.

11 Q All right.

12 And then did he sign a Local 810 card, as
13 well?

14 A Yes, he did.

15 Q And you saw him sign it?

16 A I saw him sign it.

17 Q And he, also, signed the contract, as well?

18 A I believe so.

19 Q Now, when you signed the contract, were you,
20 also, called into the office?

21 A He did part -- Steve did part of it outside,
22 you know, discussing it, and some inside.

23 Q Getting back to the card, when you signed the
24 card, Mr. Ernev and Mr. Meisiner were present, I
25 take it?

1 A Yes, they were.

2 Q And did they say anything at this time to you?

3 A No, nothing.

4 They just told me that this is -- that if
5 you have any questions at all, here's the man to ask
6 and he'll give you the answers.

7 And that was all that was said to me.

8 Q Was this the first contact, this day that you
9 first met Mr. Silverman and signed the card -- was
10 that the first contact that you had with any
11 representatives from Local 810?

12 A No.

13 They had been there before.

14 Q And when were they first there?

15 A A couple of days.

16 Q Before then?

17 A Before, yes.

18 Q I see.

19 So if you signed the contract on the 14th --
20 but, you don't recall when you signed the contract?

21 A No, I don't.

22 Q They were there a couple of days before you
23 signed the card.

24 Is that correct?

25 A Right.

* * *

CSA Reporting

- 1 Is that correct?
- 2 A The month, I don't know.
- 3 Q Well, the letter that you --
- 4 A The tenth.
- 5 Q You said -- your letter says about a week before.
- 6 A Right.
- 7 Q Your testimony puts it that way.
- 8 A Right.
- 9 Q Now, when you saw Mr. Schifano, about what
- 10 time of day did you see Mr. Schifano?
- 11 A I believe it was in the afternoon.
- 12 Q About what time?
- 13 A Say 1:30.
- 14 Q Could it have been later?
- 15 Could it have been two or three?
- 16 A Right, sometime in the afternoon.
- 17 Q Where was he coming from that afternoon?
- 18 A From the office.
- 19 Q He was coming from the office?
- 20 A Right.
- 21 Q Now, using that as a guideline, did you sign
- 22 your 810 card before this conversation or after this
- 23 conversation?
- 24 A It was well after.
- 25 Q You say "well after" the conversation.